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COMMITTEE AGAINST TORTURE

Twenty-second session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 368th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 28 April 1999, at 10 a.m.

Chairman: Mr. BURNS

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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (continued)

Second periodic report of Mauritius

* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.368/Add.1.

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GE.99-41345 (E)

The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 5) (continued)

Consideration of the second periodic report of Mauritius (CAT/C/43/Add.1); HRI/CORE/1/Add.60/Rev.1)

1. At the invitation of the Chairman, Mr. Baichoo, Mr. Dabee, Ms. Dwarka-Canabady, Ms. Narain, Mr. Sawmy and Mr. Koodoruth (Mauritius) took places at the Committee table.

2. The CHAIRMAN invited the Mauritian delegation to introduce the second periodic report of Mauritius (CAT/C/43/Add.1).

3. Mr. BAICHOO (Mauritius) said that the Mauritian Government held the work of the Committee against Torture in high esteem and was convinced that its observations on the report would lead to further progress in the democratic tradition guaranteed by the Constitution.

4. Mr. DABEE (Mauritius), introducing the second periodic report of Mauritius, informed the Committee of new legislative, administrative and judicial measures designed to check police action which had been adopted in Mauritius since the submission of the report to the Committee in June 1998.

5. The Protection of Human Rights Act, passed in December 1998 and promulgated in February 1999, provided for the setting up of a National Human Rights Commission for the promotion and protection of human rights. The Commission would be chaired by a former judge and could consider complaints of violations or foreseeable violations by the act or omission of any person acting in the performance of a public function or by a member of the police force. The Act thus sought to address the risk of lack of impartiality or cover-up by the police force when its members were being investigated for brutality and malpractices. For the first time, the police force was subject to a statutory duty to keep an independent body informed of the action it had taken on a complaint.

6. The National Human Rights Commission could also carry out investigations, of its own motion, where it had reason to believe that a violation had occurred or was likely to occur, to review the safeguards provided under an enactment for the protection of human rights or the factors impeding the enjoyment of such rights, and to visit any police station or place of detention to study the living conditions and the treatment of inmates.

7. The Commission would initially attempt to resolve complaints by a conciliatory procedure. If that failed, it could, on completion of its inquiry, refer the matter to the appropriate authorities for prosecution or disciplinary action where a violation was disclosed, recommend the payment of damages, inform the complainant of any action taken and communicate its conclusions and recommendations in writing to the Minister responsible for human rights.

8. Although a precise definition of all forms of torture had not been incorporated in domestic legislation, the measures just described coupled with the civil, criminal and administrative legislation outlined in the report would go a long way towards preventing abuses by the police force.

9. In addition, a Presidential Commission had been established in 1997 to safeguard the independence and impartiality of the judiciary and to ensure that justice was dispensed humanely, promptly and efficiently and that the Mauritian people had ready access to the courts. The Administration of Justice (Miscellaneous Provisions) Act, which incorporated some of the Presidential Commission's recommendations, had been adopted by the National Assembly. It provided, inter alia, for the admissibility of a sound or audio-visual recording of evidence given by an accused party to an investigating officer. Such recordings were subject to stringent conditions to prevent any tampering with evidence. The measure would assist in addressing frequent allegations of the use of force, torture or other illicit means by law enforcement agencies to obtain confessions.

10. The Mental Health Care Act passed in 1998 had replaced the obsolete Lunacy Act. Doctors were required to inform patients or their next of kin of the rights and freedoms prescribed by the new Act, in particular the right to be treated with humanity and respect for human dignity and to appeal to a Mental Health Commission and ultimately to the courts if a patient was dissatisfied with his or her treatment or living conditions in a psychiatric hospital.

11. With regard to new judicial measures concerning the rights of accused parties, in June 1998 the Supreme Court had reviewed the conditions in which conferences between lawyers and their clients took place at the central prisons and suggested ways of improving them. It had concluded that the existing arrangements met the minimum standards required to ensure effective access to counsel. In that context, the Prime Minister had recently stated that unannounced visits would be conducted to monitor the treatment of inmates.

12. In February 1999, riots had broken out in Mauritius following the death in policy custody of a popular singer who had been arrested for possession of cannabis. The rioters had blamed the authorities. A judicial inquiry into the circumstances of the death had been instituted immediately afterwards and a Commission of Inquiry chaired by a judge would conduct investigations and make recommendations.

13. With regard to the future, the Prime Minister had announced the enactment of an equal opportunities act in the near future and the introduction of a bill to create a police authority which would meet four times a year in public. He had also spoken of the creation of a "central investigation of complaints against the police division" which would work under the supervision of the National Human Rights Commission.

14. The Mauritian Government's contribution of US$ 3,000 that year to the United Nations Voluntary Fund for Victims of Torture was a sign of its commitment to the Convention.

15. It had not yet been possible to finalize the reform of the extradition legislation because so many other projects demanded the Government's attention and because Mauritius lacked local expertise in the area of extradition. It was to be hoped that the United Nations Drug Control Programme (UNDCP) would expand its support to Mauritius to cover mutual assistance and extradition legislation.

16. The Mauritian Government had recently hosted, at Grande Baie, the Organization of African Unity (OAU) Ministerial Conference on Human Rights, which had been attended by the High Commissioner for Human Rights and the Secretary-General of OAU and had adopted the Mauritius Declaration.

17. Non-governmental organizations (NGOs) in Mauritius contributed actively to the discussion of human rights issues and their views were taken into account both formally and informally.

18. Mr. MAVROMMATIS (Country Rapporteur) said that the purpose of the Committee's consideration of reports and concluding observations was to engage in a constructive dialogue and not to prefer charges against the State party. The oral introduction had been very interesting and useful. The report was better than the previous one, but too brief, and provided information on groups of articles instead of dealing with them individually. It also failed to address questions that had been left unanswered when the previous report had been considered.

19. He welcomed the abolition of the death penalty and the establishment of the National Human Rights Commission. What steps would be taken to ensure that its decisions were enforced? He regretted the fact that the extradition laws had not been amended and drew attention to the need, in addition, to amend the legislation on foreigners in order to cover the three situations contemplated in article 3 (expulsion, refoulement, extradition).

20. He took note of the information on police training and asked the Mauritian delegation to report on the outcome of the Labrosse case mentioned in the previous report (CAT/C/24/Add.1).

21. Turning to the current report, he said he regretted the fact that some articles of the Convention had been somewhat hastily grouped together, for example articles 1, 2 and 4, which dealt with quite different subjects. Article 1 was particularly important. The incorporation of the definition of torture in States' domestic legislation brought out clearly the horrific nature of any act of torture. In the absence of such a definition, the act in question might be simply characterized as, for example, assault, which would make it less serious.

22. He noted that Mauritian legislation on extradition failed to cover the two other possibilities contemplated in article 3, namely expulsion and refoulement.

23. Article 5 of the Convention established the universal jurisdiction of States parties to the Convention in cases of torture. The provisions of Mauritian legislation fell short of the obligations incurred by States parties in that regard.

24. He noted that paragraph 17, which listed the rights of persons suspected of having committed a crime, failed to mention the right to consult a doctor. He wished to know at what point a suspect was entitled to consult a lawyer, given that acts of torture were often committed during the first few hours of police custody. In the same connection, it would be interesting to know how much time elapsed before a suspect was brought before a magistrate. Experience showed that the longer the delay, the more time there was for traces of torture to disappear. The "reasonable time" mentioned in paragraph 19 was too vague and needed to be made more precise. In the common-law tradition, the period in question was usually seven days.

25. Turning to the question of training for police officers, he asked whether they received special training in human rights, which was particularly important, and, if so, whether existing manuals specially designed for the purpose were used.

26. Mr. EL MASRY (Alternate Country Rapporteur), while generally welcoming the Protection of Human Rights Act and the establishment of the National Human Rights Commission, said he was particularly interested in articles 11 to 16 of the Convention on which his questions would focus.

27. He noted that the information that was supposed to concern article 11 actually related to article 2 of the Convention, since article 11 required States parties to keep all interrogation rules under systematic review. He would therefore appreciate information about existing review machinery.

28. According to paragraph 41 of the report, if it was established that the statements of an accused party had been obtained by the use of force, an inquiry would be instituted by a unit of the police force. But in such cases States were required under article 12 of the Convention to proceed to a prompt and impartial investigation. There was good reason to doubt the impartiality of a police inquiry into its own services.

29. He noted that, under section 64 of the District and Intermediate Courts (Criminal Jurisdiction) Act, the Department of Public Prosecutions (DPP) could require a magistrate to intervene when police officers were suspected of torture, whereas an ex officio investigation was required under article 12 of the Convention. In the event of the death of a detainee, a judicial inquiry should, of course, be conducted systematically.

30. Like the Country Rapporteur, he noted a lack of consistency between the number of charges of assault brought against the police and the number of convictions of police officers or of disciplinary measures taken against them.

31. Paragraph 47 of the report mentioned a voice message system. He asked for more information about how it operated and how useful it had proved.

32. In general, he found some of the information provided unduly brief. Paragraph 51, for instance, merely referred the reader for information on article 16 to other articles although they dealt with quite different questions. He would therefore welcome more detailed information on any measures taken, pursuant to article 16, to prohibit acts of cruel, inhuman or degrading treatment or punishment.

33. Mr. GONZÁLEZ POBLETE noted that the 1970 Extradition Act was to be amended in the light of the provisions of article 3 of the Convention. While that was to be welcomed, he pointed out that article 8 was equally important inasmuch as it specified the provisions to be included in extradition treaties and the offences covered by such treaties. Most laws and treaties concerning extradition were based on the principle of double criminality, i.e. that the offence must be a crime in both the requesting and requested State. Furthermore, in view of the absence of a specific crime of torture in Mauritian legislation, a situation could arise in which a request for extradition could not be acted upon. Hence the importance of taking article 8 into account.

34. Mr. SØRENSEN welcomed the adoption of the Mental Health Care Act. He regretted, however, that the information on article 10 of the Convention omitted to mention medical staff despite the particular importance of promoting awareness among doctors and all medical staff of problems relating to torture. On a somewhat different subject, he asked whether forensic surgeons and forensic medical laboratories were completely independent of the police. In many countries they were not under the control of the police but attached to universities.

35. He deplored the lack of information about article 14 of the Convention concerning the right of victims to obtain redress, noting that the issue had also been given perfunctory treatment in the initial report of Mauritius. He stressed the importance of arrangements for damages, compensation and rehabilitation and, in that connection, thanked Mauritius for its contribution to the United Nations Voluntary Fund for Victims of Torture. He also urged the Mauritian Government to observe 26 June, the date designated by the General Assembly as United Nations International Day in Support of Victims of Torture. Lastly, he asked whether victims could prosecute a specific individual - their torturer - or whether they could bring an action against the State.

36. Mr. CAMARA associated himself with all the questions asked by previous speakers and stressed that the Committee's observations were intended in all cases to promote a dialogue with States.

37. With reference to article 12 of the Convention, he noted, like the Alternate Country Rapporteur, that the DPP had discretionary powers to order an inquiry when there was a suspicion of torture. The principle of discretionary prosecution was incompatible with the binding character of the Convention, which required systematic investigation in such cases. He cautioned against procedural discrepancies that opened the door to abuses, as attested by the statistics given in paragraph 45 of the report, according to which none of the 34 alleged cases had led to a criminal prosecution. He asked for details on how the ombudsman was appointed, a procedure that could influence the degree of independence he enjoyed. He also regretted the amalgamation of several articles of the Convention and drew a distinction between article 11, which dealt with review of interrogation rules, and article 15, which stated the principle of the non-admissibility of statements obtained as a result of torture.

38. The CHAIRMAN asked whether, in the case of a statement obtained under torture and hence without evidential value in accordance with the Convention, the indirect evidence was admissible under domestic legislation. He also wished to know whether the remedy of habeas corpus was available under Mauritian legislation. With regard to the possibility of instituting private proceedings, it would be interesting to know how many such actions had been brought over the past two years, how many had succeeded and what procedure was applied. Lastly, he invited the delegation to encourage its Government to adopt legislation establishing the universal jurisdiction of Mauritius to hear cases of crimes against humanity and crimes of genocide.

39. The delegation of Mauritius withdrew.

The public part of the meeting rose at 11.20 a.m.

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COMMITTEE AGAINST TORTURE

Twenty-second session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 369th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 28 April 1999, at 3 p.m.

Chairman: Mr. BURNS

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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (continued)

Initial report of The former Yugoslav Republic of Macedonia

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GE.99-41364 (E)

The meeting was called to order at 3.15 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 5) (continued)

Initial report of The former Yugoslav Republic of Macedonia (CAT/C/28/Add.4; HRI/CORE/1/Add.83)

1. At the invitation of the Chairman, the members of the delegation of The former Yugoslav Republic of Macedonia took places at the Committee table.

2. The CHAIRMAN invited the delegation to reply to the questions raised by the members of the Committee at the 366th meeting.

3. Mr. PETRESKI (The former Yugoslav Republic of Macedonia) referred briefly to the general context in which The former Yugoslav Republic of Macedonia had worked to uproot the institutional causes of torture. The country faced considerable material constraints and had a relatively low level of development and standard of living. It was undergoing a transition affecting not only the legal and political system, but also collective and individual values. Among the problem which had affected it were structural adjustment, a widening social gap and new patterns of crime which had emerged in recent years.

4. Mr. PENDAROVSKI (The former Yugoslav Republic of Macedonia) addressed the question raised by Mr. Yakovlev concerning the moment at which a person deprived of his liberty had the right to consult a lawyer. Under the Constitution, the human right to freedom was irrevocable and could be restricted only by decision of a court or in accordance with specific procedures. Any person summoned, apprehended or detained had the right to counsel during all police and court proceedings. Several articles of the Code of Criminal Procedure further specified that the defendant had the right to a defence lawyer of his choosing during interrogation and court proceedings, and that detainees were entitled immediately upon arrest to inform close relatives or third parties of their detention. Under the Law on Internal Affairs, police officers must attempt to notify the family of the detained person within three hours of the arrest. The status of such notification was documented by means of an official form.

5. Detainees in police custody had access to a doctor, and at the doctor's request the medical examination could take place in private. The results of all medical examinations were formally recorded and were made available to the detainee and his lawyer.

6. The national legislation and practice made no provision for incommunicado detention. During detention prior to questioning, the accused was never left alone with a police officer.

7. Mr. PETRESKI (The former Yugoslav Republic of Macedonia), in response to the question raised by Mr. Yakovlev concerning the implementation of articles 1 and 2 of the Convention, informed the Committee that information from the State Statistical Office was being circulated on the number of persons accused and convicted of torture and related crimes.

8. Mr. TODOROV (The former Yugoslav Republic of Macedonia) replied to questions posed by Mr. Yakovlev, Mr. Mavrommatis and Mr. Burns concerning the legal admissibility of evidence derived from torture. The legal system was not based on common law, where the principle of formally established evidence predominated, but on civil law, where the principle of substantial truth prevailed. The judge was not obliged to pursue a specific type of evidence formally presented by the defence or the prosecution, but was free to consider any evidence in order to establish the facts. However, confessions did not constitute crucial evidence under the civil law system, and the use of evidence obtained through torture was illegal. Under article 15 of the Code of Criminal Procedure, the judge must not take into consideration or base his final judgement on evidence obtained unlawfully. That would include evidence extracted through the violation of provisions of the Constitution, other laws, or ratified international treaties, which were directly applicable in the national legal system. Article 210 prohibited the use of torture, threats or other forms of pressure to obtain confessions or other statements.

9. A final judgement based on illegally obtained evidence would constitute grounds for appeal and suspension of the judgement by the court of appeal. Statements made by defendants and others during preliminary questioning must be kept in separate, sealed envelopes, and could not be considered as evidence until the end of the trial.

10. Mr. PENDAROVSKI (The former Yugoslav Republic of Macedonia) responded to Mr. Yakovlev's query concerning independent authorities which reviewed individual complaints. Citizens could appeal against administrative or practical measures taken by Government ministries or State agencies to three permanent commissions, reporting respectively to the Government, to Parliament and to the Office of the President of the Republic. In addition, the Parliament had established a permanent survey commission for the protection of rights and freedoms of citizens in accordance with article 76 of the Constitution. That commission's findings served as a basis for procedures to determine the responsibility of public officials. The Constitution also established the institution of Ombudsman, an office which acted independently and autonomously to protect citizens from acts carried out by State bodies in violation of their constitutional or legal rights. In the past year, seven allegations of torture had been filed with the Ombudsman's office, including one which had been submitted to the Public Prosecutor for the initiation of criminal proceedings against the perpetrators, and was still under consideration.

11. Ms. JANJIC (The former Yugoslav Republic of Macedonia), in answer to questions put by Mr. Yakovlev, Mr. Burns and Mr. Sørensen concerning compensation of victims of torture, said that the Code of Criminal Procedure permitted courts hearing criminal cases to decide on claims made by persons who had suffered damage as a result of criminal offences. The request must be submitted prior to completion of the trial before the court of first instance. If the accused was convicted, the court could award full or partial compensation to the victim. If the information adduced in the criminal proceedings was insufficient, the court could direct the injured party to apply for compensation through a civil procedure. To date, in practice, the courts had very rarely settled compensation claims during criminal trials, in order not to delay the proceedings. Referral to a civil procedure was

nevertheless considered undesirable, as it would entail additional costs for a person who had already been a victim of a criminal act. A revision of the Code of Criminal Procedure which was currently under consideration therefore stipulated that the court should, as a rule, award compensation as part of the criminal proceedings, referring cases to the civil courts only in exceptional instances. The revision would also establish a State fund for the victims of criminal offences, including torture.

12. Mr. PENDAROVSKI (The former Yugoslav Republic of Macedonia), in replying to questions raised by Mr. Yakovlev and Mr. Burns about allegations of excessive use of force against members of the Roma minority, emphasized that the Ministry of the Interior must take the same approach to criminal offences regardless of the perpetrator's or victim's race, sex, colour, national and social origin, political or religious beliefs, or property or social status. The Ministry always handled complaints of police improprieties lodged by Roma with the utmost seriousness. In the past year and a half, there had been no complaints of torture committed against a member of the Roma minority.

13. More generally, the statistics showed that over the past three years there had been a clear decrease in the use of physical force by police officers, as also in the number of cases where physical force had been unjustified. He believed that was a result of courses and seminars held with the participation of international experts, including the "Police and Human Rights 1997-2000" seminar organized in Skopje in September 1998, by the Council of Europe.

14. Ms. GORGIEVA (The former Yugoslav Republic of Macedonia) addressed the question, raised by Mr. Burns and Mr. Mavrommatis, of the incorporation of the definition of torture into domestic law. While there was no comprehensive provision incorporating all elements of the definition contained in the Convention, the legal system contained a number of provisions which together did fully cover the subject. The Constitution explicitly prohibited all forms of torture and other forms of inhuman or degrading treatment or punishment, and that provision was taken up in all relevant laws, including the Code of Criminal Procedure, the Law on Execution of Sanctions and the Criminal Code. Article 9 of the Constitution prohibited discrimination on the basis of race, sex, colour of skin, national and social origin, political and religious beliefs and property or social status, thus covering the concept of discrimination referred to in the definition of torture. Finally, under the Constitution, international treaties ratified by the Republic were an integral part of the legal system and were directly applicable by national courts.

15. Mr. TODOROV (The former Yugoslav Republic of Macedonia), referring to a question raised by Mr. Burns on the principle of universal jurisdiction for the prosecution of the crime of torture when it was committed by foreign nationals in other countries against foreign citizens, said the criminal laws of his country were applicable. Under the national legislation, foreigners could be sentenced to five years' imprisonment, or to severer penalties within the limits prescribed in the legislation of the country where the crime had been perpetrated.

16. In cases where the act was considered a crime according to the generally recognized principles of the international community, the defendant could,

with the approval of the Public Prosecutor, which would always be accorded in the case of torture, be prosecuted regardless of the provisions of the domestic law prevailing in the country where the offence had taken place.

17. In response to Mr. Burns's question, Ms. LAZAROVA-TRAJKOVSKA (The former Yugoslav Republic of Macedonia) said that, where grounds existed for suspicion that a crime had been committed, the police could issue a summons, although a citizen was not obliged to respond. The person in question could be apprehended only with the prior authorization of a court. Such interviews were part of the 24-hour maximum period of police custody.

18. Ms. JANJIC (The former Yugoslav Republic of Macedonia), in reply to another question from Mr. Burns, said that the right to counsel during pre-trial and trial proceedings was constitutionally guaranteed and was embodied in the general provisions of the Code of Criminal Procedure. Suspects must be immediately informed of their right to counsel of their own choice, the presence of such counsel being obligatory in certain cases. The accused might be assigned counsel, at his request, where justified by his financial circumstances. The Code of Criminal Procedure likewise embodied the right of the accused to be present during the examination of witnesses and to ask them questions, both during the investigation proceedings and in court.

19. Mr. ÇELEVSKI (The former Yugoslav Republic of Macedonia) clarified that the right referred to in paragraph 160 of the initial report (CAT/C/28/Add.4) related exclusively to convicted persons. The rights of persons in pre-trial detention were regulated in a special chapter of the Code of Criminal Procedure which provided for the submission of complaints regarding their treatment to the President of the Court and the examining magistrate. Supervision of detainees was the responsibility of the President of the competent court of first instance; that officer, or the judge appointed by him, must visit the detainee at least once a week, with provision for confidential conversation, and was obliged to take necessary measures to remedy any irregularities in the conditions of detention. Under the Law on Execution of Sanctions, persons who had submitted a complaint but were not satisfied with the administrative decision of the Directorate of Execution of Sanctions could submit a complaint to the Supreme Court of the Republic of Macedonia. The Directorate could initiate criminal proceedings before the Public Prosecutor, where appropriate.

20. Ms. GORGIEVA (The former Yugoslav Republic of Macedonia), in further reply to Mr. Burns's questions, said that every citizen of the Republic had the right to bring before the Constitutional Court an action of unconstitutionality in respect of any law or rules or any act of the organs of the State administration or institutions carrying out a public function, thereby ensuring the general protection of all the human rights guaranteed by law, including the prohibition of torture expressly embodied in article 11 of the Constitution.

21. In reply to Mr. Burns's question regarding other offences in the Criminal Code having elements of cruel, inhuman or degrading treatment, Ms. JANJIC (the former Yugoslav Republic of Macedonia) cited crimes against life and body, against human rights and freedoms, against sexual freedom and sexual morality, against marriage, family and youth, against human health,

against property (e.g. armed robbery, extortion and blackmail), against armed forces (e.g. maltreatment of subordinates), against the judiciary (coercion of judicial officials) and against humanity and international law.

22. In regard to the matters raised by Mr. Sørenson, Mr. MICEV (The former Yugoslav Republic of Macedonia) said that educational programmes against torture and other cruel, inhuman and degrading treatment featured throughout medical training, together with medical ethics at a later stage. Medical ethics and the possibility of abuse were given particular emphasis in the psychiatry specialization, which included a four-month course in forensic psychiatry, introducing students to the special conditions prevailing in, for example, prisons and correctional institutions. Organizations such as the Macedonian Psychiatric Association and the Macedonian Medical Society held regular meetings, symposiums and congresses on such subjects. In the area of the rehabilitation of victims of torture, a one year postgraduate course in prevention, recognition and treatment of post-traumatic stress disorders had been organized in 1997-1998 in conjunction with WHO, the Ministry of Health and the Medical Faculty of Skopje. The 40 graduates of the course would act as multipliers. A programme had recently been introduced to provide psychological support to refugees, with the participation of the Open Society Foundation, WHO, the national Red Cross, the Ministry of Health and NGOs. In Skopje and four other towns in Macedonia specialized clinics existed for the treatment of post-traumatic stress disorders.

23. Mr. PETRESKI (The former Yugoslav Republic of Macedonia) regretted the late submission of the initial report of the former Yugoslav Republic of Macedonia, which was to be attributed to domestic circumstances; concerted efforts were being made to enhance reporting capacity, on the basis of experience gained in producing the initial report, and it was expected that future deadlines for submission of periodic reports would be met.

24. Ms. JANJIC (The former Yugoslav Republic of Macedonia), replying to Mr. Mavrommatis's question, said that the Code of Criminal Procedure permitted the Minister of Justice to attach conditions protecting a person who was to be extradited. Thus in 1995, the extradition of a Belgian national, who had committed several offences punishable by death under Belgian law, had been authorized only upon receipt of a guarantee that such a penalty, which had been abolished by the Republic, would not be imposed or executed by the Belgian authorities.

25. Mr. TODOROV (The former Yugoslav Republic of Macedonia), replying to further points raised by Mr. Mavrommatis, said that paragraph 18 of the initial report (CAT/C/28/Add.4) should have referred to "agencies" rather than "organizations". In regard to paragraph 64, civil legislation applied to all citizens of the Republic of Macedonia, including members of the military, since no military courts or special military legislation existed. Current police training practices had been developed in accordance with the principal international human rights instruments, with emphasis on the humane treatment of citizens.

26. Mr. PENDAROVSKI (The former Yugoslav Republic of Macedonia), in reply to concerns expressed by Mr. El Masry, said that any means, methods and devices that were not specified in the regulations for use of firearms and other

coercive means (firearms, rubber truncheons, physical force, water cannon, tear gas, special motor vehicles, devices for stopping motor vehicles, and use of dogs and horses) were deemed to be illegal. Further, the use of the means specified was subject to clearly defined conditions and must be preceded by warnings.

27. Mr. CELEVSKI (The former Yugoslav Republic of Macedonia), replying to a question concerning the monitoring of interrogation rules and practices with a view to preventing torture, said that a number of relevant laws and regulations had been amended in recent years and new by-laws had been enacted. Article 12 of the Law on Execution of Sanctions now included an explicit prohibition of torture and other forms of inhuman or degrading treatment or punishment. Article 20 prohibited medical or other experiments that impaired the physical or psychological integrity of convicted persons. Article 19 prohibited the collective punishment of prisoners and the use of force as a means of punishment. Article 4 required prison officers to respect prisoners' religious convictions. Article 75 provided for judicial supervision of penal institutions and a State Commission for Supervision had been established. The provision in the Code of Criminal Procedure allowing a judge to caution a prisoner that silence might complicate the gathering of evidence in his defence had been revoked because of the scope it offered for coercing an accused person to speak. The Ministry of the Interior was engaged in an ongoing process of revision of relevant laws, rules and regulations.

28. Mr. TODOROV (The former Yugoslav Republic of Macedonia) said that a subordinate would not be punished under the Criminal Code for committing a crime on the orders of his superior as part of his official duties unless the order involved the commission of a war crime or some other serious crime or unless the subordinate knew that execution of the order would be a crime. The term "serious crime" denoted all crimes carrying a sentence of at least five years' imprisonment, including the crime of torture.

29. Mr. CELEVSKI (The former Yugoslav Republic of Macedonia) said that there was a judge in every court of first instance with a penal establishment in its jurisdiction who was responsible for supervising the execution of sanctions, including the treatment of convicted persons and the enforcement of their rights and duties. The director of the establishment was required to provide the judge with relevant documents and unrestricted facilities for the performance of his supervisory duties, including confidential meetings with prisoners. If irregularities came to light, the judge took steps to ensure that they were rectified within a specific period and that the prisoners' rights were restored.

30. Mr. TODOROV (The former Yugoslav Republic of Macedonia) said that the officials of the Ministry of the Interior were required to bring a suspect before an examining magistrate within 24 hours of his arrest. The magistrate was obliged to inform the arrested person immediately of his right to be assisted by counsel during the examination and, if necessary, to have counsel assigned to him. If the arrested person chose to dispense with legal assistance or made no arrangements for it within 24 hours, the examining magistrate must proceed immediately with the investigation. The magistrate then decided whether to release the arrested person or to remand him in custody, in which case he informed the public prosecutor of his decision. If

the public prosecutor did not submit a request for investigation within the next 24 hours, the examining magistrate must release the arrested person.

31. Mr. YAKOVLEV expressed admiration of the delegation's comprehensive response and businesslike approach to the dialogue with the Committee.

32. Reverting to the question of invitations to citizens to appear at police stations for "informative talks", he noted that a person who refused to respond could be arrested. The implication was that a person who might be no more than a potential witness could be detained for 24 hours. If there were no charges, he would not even be entitled to legal assistance. Sources such as the Special Rapporteur of the Commission on Human Rights on the situation of human rights in the former Yugoslavia, the United States Department of State and Human Rights Watch had complained of the widespread police practice of forcing persons to attend "informative talks" in the absence of counsel in an effort to obtain confessions under pressure. What was the legal status of persons arrested under such circumstances?

33. Mr. PENDAROVSKI (The former Yugoslav Republic of Macedonia) said that a police officer could not apprehend a person without prior authorization by a court. The judge must be convinced that the evidence presented by the police was sufficient to warrant further proceedings.

34. Mr. PETRESKI (The former Yugoslav Republic of Macedonia) said that the Constitutional Court had decided to abolish the practice of summoning citizens for "informative talks" in 1996 and the legislation had been amended in 1997.

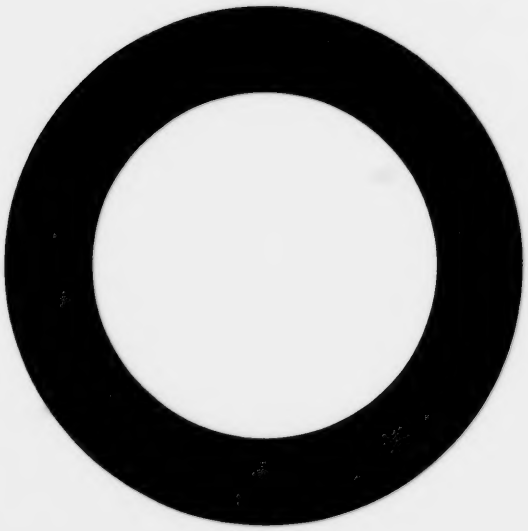
35. Mr. PENDAROVSKI (The former Yugoslav Republic of Macedonia) said that, prior to 1997, a police officer had been able to apprehend a person whom he viewed as an offender without seeking the authorization of a judge.

36. Mr. PETRESKI (The former Yugoslav Republic of Macedonia) said that his country viewed the right to freedom from torture and other cruel, inhuman or degrading treatment or punishment as one of the most fundamental human rights. During the past eight years, it had waged a determined campaign to eradicate such practices. Being aware, moreover, that torture and ill-treatment were virtually irreparable, the authorities were laying considerable emphasis on prevention. They also set great store by constructive dialogue and transparency, particularly in cooperation with international bodies such as the Committee, whose views and guidance would be turned to account and reflected in the next periodic report.

37. The CHAIRMAN said that the Committee had been assisted in its task by the large and highly qualified delegation which had taken great pains to respond in detail to its questions. He invited the delegation to return later in the session to hear the Committee's conclusions and recommendations.

38. The delegation of The former Yugoslav Republic of Macedonia withdrew.

The public part of the meeting rose at 4.35 p.m.



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COMMITTEE AGAINST TORTURE

Twenty-second session

SUMMARY RECORD OF THE 370th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 29 April 1999, at 10 a.m.

Chairman: Mr. BURNS

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ACTION BY THE GENERAL ASSEMBLY AT ITS FIFTY-THIRD SESSION (continued)

This record is subject to correction.

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Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum to be issued shortly after the end of the session.

GE.99-41407 (E)

The meeting was called to order at 10 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF T CONVENTION (agenda item 5) (continued)

Initial report of Venezuela (CAT/C/16/Add.8 and HRI/CORE/1/Add.23)

1. At the invitation of the Chairman, Mr. Simón Jiménez, Mr. Rodríguez Cedeño, Ms. Alguindigue, Mr. Michelena, Ms. Guevara, Mr. Sa and Ms. Mendoza (Venezuela) took places at the Committee table.

2. Mr. SIMÓN JIMÉNEZ (Venezuela) said that Venezuela was firmly committ to human rights. To place the current reform process in context, it shou noted that a new President had assumed office in February 1999 following t general elections held in December 1998. Respect for and the protection o human rights had been a key theme of the election campaign and the new Government intended to keep its promises in that regard. While breaking w its recent past, the country was resuming a long-standing tradition of res for the dignity of the human person, as evidenced both by its accession to large number of international human rights treaties, including the Convent against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishm which had been ratified in July 1991, and by the Constitution of Venezuela Promulgated in 1961, the Constitution contained many provisions designed t safeguard human dignity and to protect the physical, moral and mental integrity of the individual, as well as provisions that unequivocally condemned any breach of the rights it recognized. The new Government had undertaken to respect and to ensure respect for existing rights and was determined to take further action to obtain unquestioning respect for huma rights. It was in that context that a whole set of legislative, judicial administrative measures were being adopted, some of which constituted a radically new approach.

3. On the legislative front, a bill against torture, ill-treatment and cruel, inhuman or degrading punishment, whose provisions corresponded to t of the Convention, was under consideration. The bill, which created a separate crime of torture, punishable by specific penalties, would very shortly be discussed by the Chamber of Deputies.

4. Another important initiative would be the entry into force, on 1 July 1999, of a new Code of Criminal Procedure, which was well-nigh revolutionary in terms of its departure from previous provisions. The rig to bring a criminal action would in future be vested in the Attorney-Gener who would be required to institute proceedings in cases of human rights violations by State officials. The inquisitorial system would be replaced an adversarial system entailing the presumption of innocence. The new Cod Criminal Procedure introduced many other innovations, one of the most important of which was a maximum period of police custody of 48 hours. On that time limit expired, the suspect had to be brought before a judge and also entitled from the beginning of the proceedings to have access to a lawyer. In a further move to protect accused persons, the forensic medici service, which had previously come under the police force, was being place

under the control of the Attorney-General's Office. Those measures were to be supplemented by the abolition of a privilege conducive to impunity: the official immunity enjoyed by police officers.

5. Transparency would be enhanced by the establishment of juries and the introduction of simpler oral proceedings. Confessions would lose their importance by virtue of the fact that statements other than those made before a judge would be inadmissible. And the establishment of the office of judge for the enforcement of sentences would provide additional protection for the rights of accused persons.

6. All the foregoing measures and others, such as the introduction of new forms of conflict resolution and compensation machinery for victims of ill-treatment, would enhance the State's compliance with its obligations under the Convention.

7. With a view to building up a comprehensive and effective body of legislation, the Government had begun a process of drafting a large number of bills and amending existing laws, such as the law prohibiting violence against women, the bill on the protection of children, the amnesty bill and other instruments relating to alternative penalties and the prison system and regulating the conduct of officials. At the same time, action was being taken to promote awareness among officials at all levels of human rights provisions and the penalties to which they were liable if human rights were violated. When the new Code of Criminal Procedure came into force, it was expected that criminal proceedings would be speeded up and that there would be an increase in the number of actions brought against officials acting in that capacity.

8. Training was assuming greater importance following the establishment of a human rights chair, a separate discipline that would form part of the training course for future police officers. While abuses of authority were still possible, the Government was trying to develop a new human rights culture so that, for example, the use of force became the exception rather than the rule. Prison warders and directors of penitentiary establishments were also being given special training. Civil society and public opinion could play a major role in strengthening the human rights culture, given the large number of non-governmental organizations (NGOs) and the existence of press freedom.

9. At the administrative level, numerous measures had been taken or would shortly be introduced. In the area of prison administration, a computerized system for the registration and supervision of detainees had just been installed and could be consulted at any time. Efforts were being made to deal with the problem of prison overcrowding: prison capacity had been increased by 4,972 places in 1998 and a further expansion of 1,600 places was expected in 1999. Another important decision concerned the segregation of accused persons from convicted persons. The introduction of alternative penalties for some categories of prisoners should also lead to a reduction in the prison population. In addition, some services (refectories, laundries, etc.) were being privatized with a view to improving prison living conditions. It had also been decided to merge the ministries of internal relations and of justice.

10. With regard to the police force, two trends were taking shape. first was a kind of filtering process, illustrated by the instructions to the National Guard, which was no longer authorized to take part in police operations. As a military force, it had been found responsible many abuses of authority when it carried out police duties. The secon related to the new demands being made on the police forces, which were given better training in return and enjoyed better material conditions new rigorous approach was reflected in the number of actions brought a police officers and the number of penalties that had been imposed. Fo example, out of 600 legal proceedings brought against metropolitan pol officers, 539 had resulted in penalties and 169 had gone to court. In 402 officials employed by the prison services had been subjected to disciplinary or other measures.

11. In conclusion, he said his Government was firmly resolved not to compromise on the fundamental question of human rights. Election prom aside, its aim was to ensure respect for the rule of law, to broaden m proscribe arbitrary conduct and to thwart impunity. Although traces o previous regime and culture inevitably survived, the Government firmly intended to punish the guilty and do its utmost to put an end to human violations. It was in that perspective that Venezuela had embarked unwaveringly on the path of respect for human rights, both nationally internationally.

12. The CHAIRMAN thanked the head of the Venezuelan delegation for introducing his report and observed that many of the reforms carried o consistent with fundamental human rights standards.

13. Mr. GONZÁLEZ POBLETE (Country Rapporteur) said that he shared th Chairman's view, specifically with regard to conformity with the provi the Convention. He noted that the State party had ratified the Conven in 1991, had made the declarations under articles 21 and 22 and had no formulated reservations. However, it should have submitted its second periodic report in August 1996 and the core document (HRI/CORE/1/Add.3 to be updated.

14. The determination expressed by the delegation to promote the pre of torture and other cruel, inhuman or degrading treatment or punishme highly commendable.

15. Venezuela had only partially respected the Committee's guideline the submission of reports. The report contained no information concer cases investigated by the judicial authorities during the period under i.e. from 1991, the date of submission of the core document, to 1998, of submission of the initial report. It also failed to describe the r situation with respect to the practical implementation of the Conventi Furthermore, the requisite statistical data on implementation had not included.

16. He welcomed the entry into force of the new Code of Criminal Pro in July 1999. Some provisions of the Code still in force, which compl the procedure for filing complaints against members of the police forc disappear. Other favourable developments included: the reduction in

length of pre-trial detention from eight to four days in accordance with the recommendations of the Special Rapporteur on torture, Mr. Nigel Rodley; the inadmissibility of statements other than those made in the presence of a judge or defence counsel; and the decision to switch from inquisitorial criminal proceedings, in which confessions were given more weight, to accusatorial and adversarial proceedings. While those provisions, would, if implemented, certainly help to reduce the number of cases in which detainees in police custody were subjected to ill-treatment and torture to extract a confession, they would not be enough to ensure the eradication of such vile practices. It would also be necessary to train members of the security and police forces in respect for human rights.

17. In the light of paragraphs 99 and 100 of the core document (HRI/CORE/1/Add.3), he wished to know whether the new trend in favour of the principle of making international instruments self-executing had affected any other treaties ratified since the submission of the report.

18. He wished to know where treaties really stood in Venezuela in the order of rank of legal provisions. According to paragraph 5 of the initial report, international human rights instruments had constitutional status, but paragraph 97 of the core document stated that international treaties took precedence over Venezuelan laws, except the Constitution.

19. With regard to article 2, paragraph 1, of the Convention, paragraph 30 of the initial report stated that the prohibition of torture was absolute in Venezuela, even in areas where a state of emergency had been declared, as stipulated in articles 60 and 141 of the Constitution. Administrative and statutory provisions had been adopted on the basis of that constitutional principle, some of which were mentioned in paragraphs 2 to 22 of the initial report, and supplemented by other instruments such as organizational acts. Despite the existence of such an array of instruments purporting to prevent and punish torture and ill-treatment, however, such practices were still common, as evidenced by the many cases reported, inter alia, by Mr. Nigel Rodley or Amnesty International.

20. Information from a variety of sources indicated that the main perpetrators of such acts were law enforcement officials, particularly the members of the Technical Corps of the judicial police and of the Departmental Directorate of the Intelligence and Prevention Services, two institutions under the control of the Ministry of Justice and the Ministry of the Interior, respectively. To make matters worse, the former body was responsible for investigating crimes of torture and the latter for investigating complaints of torture. The system was thus basically flawed, a fact that could account for the small number of complaints of torture, given that individuals would hesitate to take action for fear of reprisals against themselves or members of their families. It should further be noted that many cases characterized as ill-treatment were in fact cases of torture.

21. In addition to police stations, penitentiary establishments were also places where the provisions of the Convention were breached. Poor conditions of detention were partly due to prison overcrowding, which was in turn ascribable to the fact that many detainees were persons awaiting trial. Out of a total of 24,929 detainees, only 8,478 had already been convicted and were

serving their prison sentence. The overcrowding in turn generated violence; according to a Human Rights Watch report, 500 persons died each year in prison as a result of acts of violence among inmates. Lack of supervision was another contributory factor. The State party's plans to improve the prison infrastructure were therefore welcome news.

22. The Venezuelan Government should also, as a matter of urgency, establish a system for the supervision of law enforcement institutions and, in particular, take disciplinary action against officials who violated the provisions of the Convention. He noted in that connection that the Special Rapporteur had been unable to obtain relevant information about the number of cases in which disciplinary action had been taken. Again, the new Code of Criminal Procedure seemed to make no provision for unannounced visits to police stations where persons were held in pre-trial detention. It was a measure that should be considered, together with the following: an improvement in conditions of detention, including health and food conditions; the introduction of a system of surveillance of all places where persons might be subjected to torture, particularly prisons or police stations; and the training of personnel in charge of detainees and, in particular, the dissemination of human rights principles.

23. While torture in Venezuela was not systematic and automatic, it was still wrong to assert, as had been done in the initial report, that cases of torture were isolated or infrequent. In fact, the Special Rapporteur on torture had drawn attention to the dichotomy between the legislative provisions in force and the actual situation. It was therefore important not to rely solely on laws and regulations, but to ensure that they were implemented, particularly by adopting the above-mentioned measures.

24. Article 2, paragraph 2, of the Convention stated that no exceptional circumstance whatsoever could justify torture and that provision was guaranteed in principle by article 60 of the Venezuelan Constitution. But public freedoms had been suspended in the areas bordering Colombia for long periods, during which many cases of arbitrary detention extending well beyond eight days and numerous cases of torture by the armed forces had been reported. With regard to article 2, paragraph 3, it was acknowledged in paragraphs 32 and 33 of the report that, although obedience could not be invoked under the Constitution as an excuse for acts of torture, two legal provisions ran counter to the Constitution in that regard. In particular, the Armed Forces (Organization) Act stipulated that the criminal responsibility of the perpetrator of an offence was limited if he was merely obeying orders. He hoped that the text of the new law on torture would expressly rule out the possibility of invoking those provisions to justify acts of torture.

25. With reference to article 3 of the Convention, paragraph 35 et seq. of the report indicated that Venezuela could not extradite a person to a country where he or she was in danger of being tortured because such action would be contrary to the international treaties signed by the State party, which were automatically applicable in domestic law. That statement had been given the lie by two reports that had reached the Committee, one from five Venezuelan non-governmental organizations and the other from Amnesty International. The organizations in question had reported the case of an individual who had been extradited although she risked being tortured in the country to which she had

been returned. The case had actually been referred to the Committee under the confidential procedure provided for in article 22 of the Convention and it had taken a decision on the matter that had been duly communicated to the State party.

26. The report also stated that, in Venezuela, decisions on extradition were taken by the Supreme Court as the sole and final authority. The new Code of Criminal Procedure confirmed that provision, so that there was no possibility of appeal in cases of extradition or even of amparo proceedings. That situation seemed entirely inconsistent with the principle of two-tier proceedings on which the Venezuelan legal system was based and the provisions in question should be reviewed. It should further be noted that article 3 of the Convention also referred to measures of expulsion and refoulement. The Committee would welcome information on such measures, especially the administrative procedures in force in relation to requests for asylum.

27. He would not dwell on the implementation of article 4 of the Convention, since a law on torture was being drafted. He would simply note that the legislation contained no definition of torture, referring only to situations constituting acts of torture, which did not include all the acts covered by the Convention. Moreover, the penalties imposed for such offences were not commensurate with the seriousness of the acts committed. He noted, however, that the forthcoming bill provided for an appropriate increase in the severity of penalties and set a 15-year time-limit for prosecution, which was a considerable improvement on the existing provisions.

28. Article 4 of the Penal Code broadly fulfilled the requirements of article 5 of the Convention, except, of course, for the fact that Venezuelan criminal legislation contained no definition of torture. That omission created problems for the implementation of articles 6 to 8 of the Convention. Venezuelan law, like the Inter-American Convention on Extradition and most bilateral agreements concluded by Venezuela, established the principle of double criminality for both the requesting State and the State granting extradition; the lack of a definition of torture in Venezuelan legislation could be an obstacle in practice to the extradition of a person guilty of torture; in Venezuela, as in many other countries, a criminal offence must be characterized as such in the Penal Code in order to be recognized. It was therefore to be hoped that the new law on torture, containing a definition of the offence of torture, would be promulgated speedily so that articles 6 to 8 of the Convention would not prove to be inapplicable in Venezuela.

29. Mr. HENRIQUES GASPAR (Alternate Country Rapporteur) commended the State party on its frank admission of the difficulties it faced in implementing the Convention and its firm political intention to overcome them.

30. Education and training for law enforcement officials were a key aspect of the Convention. In that connection, the report described the authorities' praiseworthy efforts on a number of fronts to implement the provisions of article 10; special mention should be made of the establishment of an Institute of Prison Studies to provide theoretical and practical training courses for senior prison officers and of the courses for doctors. But those efforts still fell far short of what was needed and the report failed to mention training courses for police officers, although that was where the

shortfall was most worrying: brief initial training, provided largely by NGOs, and with no refresher courses. He would appreciate additional information about the training of police officers in preventive measures and human rights awareness, the content of curricula, the length of training periods and the rank of the officers trained. The limited amount of training provided at junior grades was, in his view, a major flaw and a full-scale re-education effort was necessary at that level.

31. The material on article 11 of the Convention contained in paragraph 81 of the report was insufficient. The Committee would appreciate detailed information about specific plans to remedy a situation that had been recognized as worrying, particularly through training courses for police personnel. Compliance with the provisions of article 12 had apparently been mediocre and, according to the information compiled by the Special Rapporteur on torture, the situation was characterized by negligence and a lack of transparency; cases of concealment of facts had been reported during investigations. It would be useful to know in that regard whether, under the new Code of Criminal Procedure, the Office of the Public Prosecutor or some other competent body would be authorized to conduct impartial inquiries into police violence, independently or in collaboration with reliable specialized services. In that connection, he welcomed the change in the status of the Institute of Forensic Medicine, which would enjoy greater autonomy.

32. The special procedure based on "información de nudo hecho" (an information) mentioned in paragraph 89 of the report seemed to be contrary to article 13. Fortunately, the new Code of Criminal Procedure was likely to revoke that procedure and it was to be hoped that all complaints of torture or ill-treatment would in future be investigated because the principle of discretionary prosecution was absolutely incompatible with the obligations imposed by the Convention. But he noted that the principle was still applied to acts committed by members of the armed forces. Still on the subject of article 13 of the Convention, the major disparity between the number of cases of torture reported and acknowledged by the authorities and the number of criminal penalties or disciplinary measures imposed on the police officers involved was surprising. He would appreciate recent figures on such cases.

33. Lastly, the fact that evidence obtained by torture would be deemed inadmissible under article 214 of the draft new Code of Criminal Procedure, as required by article 15 of the Convention, was a welcome development. However, it should be stressed, in the light of paragraph 102 of the report, that a mere change in the legislation was not enough: a major effort of training, education and awareness-building would still be necessary.

34. Mr. SØRENSEN welcomed Venezuela's adoption of a new law on the protection of children, which was of interest not only to the Committee on the Rights of the Child because the torture of children was unfortunately not a rare occurrence. As the law would enter into force only in the year 2000, it was too soon to ask questions about it. With regard to article 10 of the Convention, covered in paragraphs 64 to 75 of the report, Mr. Henriques Gaspar had already mentioned the progress made in forensic medicine, but it should be stressed that article 10 related to training not only for forensic doctors,

but for all categories of medical personnel. He would therefore appreciate information about the content of courses on the prevention of torture at different levels of medical studies.

35. Victims of acts of torture were entitled to redress, compensation and rehabilitation, in accordance with article 14 of the Convention. The new law on torture would guarantee that right, but there were also other means of offering redress to victims, such as observation of the United Nations International Day in Support of Victims of Torture. Venezuela's contribution to the United Nations Voluntary Fund for Victims of Torture was also a gesture of recognition and respect which he hoped would be renewed in 1999.

36. According to paragraph 96, Venezuela had no rehabilitation programme for victims of torture. But he knew of two centres who looked after torture victims in Venezuela and would pass on information concerning them because they were continually in need of money and were constantly in fear of being closed down: it would be a very important step for them to secure State recognition.

37. Mr. CAMARA said that renewed emphasis should be placed on the key issue of exemption from liability for offenders who had obeyed orders. As acknowledged in the report, two provisions were in flagrant breach of article 46 of the Venezuelan Constitution and yet there seemed to be no plans to remedy a situation that seriously impaired the consistency of Venezuelan legislation. According to paragraph 82 of the core document on Venezuela (HRI/CORE/1/Add.3), however, the Attorney-General of the Republic could request the Supreme Court to declare null and void any legislation or administrative measures that he considered unconstitutional. In such a flagrant case of incompatibility, it could be asked what prevented the Attorney-General of the Republic from exercising his authority and whether he might be roused from his inertia.

38. Mr. YAKOVLEV said that he was concerned about the military courts, which apparently had jurisdiction over ordinary offences committed by members of the armed forces, so that they might have to hear cases of torture. The military courts had been known to admit reduced responsibility in the case of offences committed by order of a superior officer. He wished to know whether there were specific provisions governing acts of torture committed by members of the armed forces. Although the military justice system had been reformed in 1998, cases continued to be referred to it solely on the initiative of the President of the Republic, the commander-in-chief of the armed forces and certain other authorities. If the latter were disinclined to institute proceedings, a risk of impunity existed and steps should be taken as soon as possible to remedy the situation.

39. The CHAIRMAN said that he particularly welcomed the reform of the Penal Code and the Code of Criminal Procedure set in motion by the Venezuelan Government. However, he asked the delegation to let the secretariat know when the reforms were adopted and became an integral part of Venezuelan legislation because there had been cases in which the Parliament of a Latin American country had rejected a planned reform.

40. The case mentioned by Mr. González Poblete concerning the extradition of Cecilia Rosanna Núñez was no longer confidential because it had been made public by Amnesty International. It was only the third time that a Government had failed to respond to a request for interim measures, a step taken by the Committee when it saw an urgent need to protect an individual's safety. While noting that conditions had been attached to the extradition, in accordance with the speciality rule, he urgently requested the Venezuelan delegation to inform the Ministry of the Committee's disappointment about the case.

41. With regard to the cases mentioned in paragraphs 768 and 779 of the report of the Special Rapporteur on torture (E/CN.4/1999/61), both of which concerned women, he wished to know whether an inquiry had been conducted, whether there had been legal proceedings and, if so, what the outcome had been. One of the women had allegedly been beaten by the police and blackmailed to confess to a theft and was reportedly still in custody. The other had allegedly been raped by an official and had been unable to bring legal proceedings because the police had falsified the evidence. He wished to know what category of official had been involved. The fact that the rape had been committed by a State official added to the seriousness of the crime. He found the use of the word "irregularity" to describe it in the report surprising to say the least.

42. The delegation of Venezuela withdrew.

The meeting was suspended at 12.05 p.m. and resumed at 12.30 p.m.

ACTION BY THE GENERAL ASSEMBLY AT ITS FIFTY-THIRD SESSION (agenda item 9) (continued)

43. The CHAIRMAN announced that, in resolution 53/139 of 1 March 1999, the General Assembly had authorized the Secretary-General to extend the Committee's spring sessions by a week. He welcomed Denmark's tenacity, thanks to which the additional week had been secured.

44. A number of issues had been raised at the tenth Meeting of Chairpersons of Human Rights Treaty Bodies, including that of the interchangeability of meeting venues. Holding sessions in New York would impose an additional financial burden on the Committee and it had been principally on that ground that the Committee had rejected the proposal three years previously. If he heard no objection, he would take it that the Committee wished to continue holding its sessions in Geneva.

45. The proposal was adopted without objection.

46. With regard to media coverage of the activities of treaty bodies, another issue raised at the tenth Meeting, he asked the members to think about ways of drawing the attention of the media to aspects of the Committee's work in which they showed little interest, but which the Committee considered important, and invited them to make proposals to that effect during the session.

47. The following suggestions had been made at the Meeting with a view to dealing with the backlog in communications: extending sessions by one week,

increasing the number of members and setting up small working groups. The Committee against Torture already had an extra week and the system of country rappporteurs was equivalent to the working group system. However, in order to be prepared for future developments, he encouraged the members of the Committee to make suggestions for improvements in the working methods, particularly with regard to the consideration of communications.

48. Mr. SØRENSEN noted that the Committee's decision at the beginning of the session to revert to its former practice of considering several reports under article 19 on the same day would save a considerable amount of time and bring the Committee up to date in its consideration of reports.

49. The CHAIRMAN said that the Meeting had also addressed the question of reservations to human rights treaties and that he had sent its observations on that subject to the International Law Commission.

50. Lastly, he considered that the Committee had already met the requirement for committees to take gender-specific issues into consideration in their work since it had appointed a rapporteur on women's issues and the country rapporteurs and alternate country rapporteurs also took that aspect into account. He invited members to make further suggestions for implementing United Nations policy on the matter.

51. Mr. GONZÁLEZ POBLETE asked whether members could receive all the information contained in reports by other committees, especially the Human Rights Committee, which the Committee against Torture might find useful, especially in connection with the independence of the judiciary. Such information need not necessarily relate to countries whose reports were being considered by the Committee, because it was conceivable, for example, that the Committee would use Human Rights Committee recommendations to a particular country as a criterion for preparing its own, even where a different country was involved.

52. The CHAIRMAN said it would certainly be possible to provide members with the annual report of the Human Rights Committee and the reports of the Special Rapporteur on the independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers and of the Special Rapporteur on torture.

The meeting rose at 12.50 p.m.

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COMMITTEE AGAINST TORTURE

Twenty-second session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 371st MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 29 April 1999, at 3 p.m.

Chairman: Mr. BURNS

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CONSIDERATION OF REPORTS SUBMITTED UNDER ARTICLE 19 OF THE CONVENTION (continued)

Second periodic report of Mauritius (continued)

* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.371/Add.1.

This record is subject to correction.

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Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.99-41421 (E)

The meeting was called to order at 3 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4) (continued)

Second periodic report of Mauritius (continued) (CAT/C/43/Add.1)

1. At the invitation of the Chairman, the members of the delegation of Mauritius resumed their places at the Committee table.

2. Mr. DABEE (Mauritius), in reply to the questions raised by the Committee, said that Mauritius shared the problems experienced by other small countries in meeting its reporting obligations; the Committee's suggestions would be taken into account for the preparation of future reports.

3. In regard to the questions raised by Mr. Mavrommatis, the fact that two of the six members of the National Human Rights Commission were non-lawyers was intended to counter the risk of the Commission's exercising its functions in too legalistic a manner. It was unlikely that the Executive would fail to implement the Commission's recommendations, for the pressure of public opinion, including that of NGOs and members of the National Assembly, would make it difficult to ignore recommendations for the granting of relief to victims of human rights violations, particularly as the Commission's annual report, which was to be submitted to the Assembly, would be the subject of public debate.

4. In regard to expulsion and return provisions (article 3 of the Convention), a deportation order by the Executive was made in the light of the findings and conclusions of a magistrate, and was subject to judicial review by the Supreme Court. Courts would not authorize expulsion or deportation unless guarantees, such as protection from torture, were forthcoming.

5. The two police officers who had been prosecuted in connection with the Labrosse case, in which the victim had died, had been acquitted by the intermediate court after a lengthy trial.

6. Mauritius intended to incorporate the provisions of the Convention into domestic law, although effectively protection against torture was already provided by section 77 of the Criminal Code which criminalized any breach of the Constitution, including a breach of the right to protection from torture. It remained only, therefore, to amend section 77 so that an order from a superior officer could no longer be invoked as a defence against prosecution for torture.

7. Paragraph 38 of the report, which had caused some confusion, should be construed to mean that extraterritorial jurisdiction currently extended to the few cases mentioned in the paragraph; Mauritius intended to legislate in respect of universality of jurisdiction over offences of torture, genocide and other universal crimes.

8. The Coowar case demonstrated that under section 5 (3) (b) of the Constitution, together with the relevant provisions of the Judges' Rules, a person who had been arrested and was being detained had a constitutional right

not only to have access to a lawyer but also to be informed of that right. A statement taken from an arrested person who had not first been informed of his right to counsel would not be admissible. In practice, the person would be informed of his right to counsel upon arrest, and at any time thereafter counsel might visit his client, who in turn might refuse to give his statement unless his counsel was present.

9. In clarification of paragraph 19 of the report, the provisions of section 13 of the District and Intermediate Court Act had been superseded under the new Constitution, which permitted detention without an order from a magistrate only when no magistrate was available, for instance during the weekend. Even then, the Bail Act empowered the police to release a detainee on parole. Although it was theoretically conceivable that an accused could be remanded indefinitely, initially for a maximum of 21 days to a police cell and subsequently for periods of 14 days to jail, section 10 (2) of the Bail Act vested in the magistrate the power to release a detainee on bail or subject to conditions whenever he was not satisfied that continued detention was justified. On occasion magistrates had, proprio motu, released detainees where they considered that police procedures had been excessively slow. The report of the Presidential Commission on Reform of the Judiciary had recommended time limits of three to six months from the date on which the offence was reported to that on which a criminal charge was lodged against the accused; when that recommendation was implemented, the duration of pre-trial detention would be curtailed.

10. It had not been possible to ascertain whether text books and material prepared by the United Nations Centre for Human Rights were used in the training of police and prison officers.

11. Supplementing the provisions of the Judges' Rules as a deterrent from obtaining a confession by duress, torture or other forms of pressure, the recently enacted Administration of Justice (Miscellaneous Provisions) Act provided for the admissibility of sound recording of confessions; for certain offences confessions would not be admissible unless recorded. However, there was no systematic and ongoing mechanism for the review of interrogation rules.

12. In reply to further questions put by Mr. El Masry, it was expected that the supervisory role of the National Human Rights Commission would have a significant deterrent effect on any attempts by the police to frustrate investigations into police misconduct towards citizens. Despite the wording of the law in regard to judicial inquiries, the procedure invariably followed in the event of a death in prison or in police custody was for the Director of Public Prosecutions (DPP) to instruct the magistrate to hold a judicial inquiry into the causes and circumstances of the death, as exemplified by the prompt action taken following the death of the singer Kaya in such circumstances. Although the statistics his delegation had cited recorded no convictions of or disciplinary action against police officers, the inquiries were believed to have been impartial since they had always been conducted in court by law officers of the DPP's Office and there was no evidence that any such case had been badly or incompetently conducted or unfairly tried or judged. In the future, the supervisory role to be exercised by the National Human Rights Commission would provide a further guarantee.

13. The delegation were not in a position to provide details regarding the manner in which the voice message system operated in practice, but the police had stated that they did indeed pursue investigations of complaints recorded on the system.

14. With regard to article 16 of the Convention, the measures to prevent torture described in the report under articles 10, 11 and 12 were also applicable to acts of cruel, inhuman or degrading treatment or punishment.

15. He agreed that the principle of double criminality should not operate in such a way as to provide asylum for torturers in Mauritius. The remedy consisted in making torture a specific criminal offence and ensuring that all provisions of the Convention governing extradition were covered.

16. Concern had recently been expressed in the National Assembly regarding the fact that the forensic services and police medical personnel operated under the aegis of the police. The Presidential Commission on Judicial Reforms had addressed the matter and recommended that a Government-sponsored corporate entity should be set up for the purpose and should charge the police or other customers for its services. Suspects had recently demanded counter-autopsy reports because of their lack of faith in police reports. Such procedures were sometimes very costly, for example when foreign forensic doctors were hired at commercial rates. The authorities were therefore studying the requisite changes in legislation and the financial implications of a reform of the existing system.

17. The authorities had not yet established a rehabilitation or compensation fund for victims of torture or their next of kin. The Human Rights Commission intended to recommend such a step and the Government would doubtless take action in the context of its phased implementation of its obligations under the Convention as soon as the requisite resources were available.

18. A torture victim could sue either the wrongdoer or the State by virtue of its vicarious responsibility as an employer. In practice, most victims preferred to sue the State as the party most likely to be solvent. In some deserving cases involving, for example, police brutality, the State had made out-of-court settlements of claims.

19. There were no separate psychological support services for torture victims but psychologists employed by the public health services dealt with victims of public or private wrongdoing. Medical care was provided free of charge and was available on a non-discriminatory basis throughout the country.

20. It was a legitimate perception that the Office of the Director of Public Prosecutions might on occasion take the part of police officers in cases of alleged wrongdoing. However, the fact that the Commissioner of Police himself had recently been suspended from duty for suspected malpractice testified to the willingness of the authorities to take action in clear prima facie cases of police wrongdoing. An inspector of police had been arrested the previous week on charges of forgery and was currently in police custody.

21. The Ombudsman enjoyed security of tenure in the same way as judges and could be removed only by the President on the recommendation of a constitutional tribunal.

22. The principle applicable to derivative evidence was that courts weighed the prejudicial value of such evidence against its probative value. It was for the judge to decide whether it should be excluded or admitted. Where the prosecution had no evidence apart from that obtained through an inadmissible statement, the court would probably exclude the evidence on the grounds that its prejudicial value outweighed its probative value.

23. The delegation had been unable to obtain up-to-date statistics on private prosecutions. Of the few prosecutions instituted each year, some were genuine cases and others were instituted simply out of spite because the prosecuting parties were themselves being sued. In a few cases, the Director of Public Prosecutions had discontinued private prosecutions and ordered a police inquiry to establish whether there was a minimum basis for preferring charges. He hoped to provide detailed statistics in the next periodic report.

24. Mr. MAVROMMATIS (Country Rapporteur) thanked the delegation for its comprehensive replies to the Committee's questions and for making them available in typewritten form, which greatly facilitated the Committee's task.

25. If a person residing lawfully or unlawfully in Mauritius alleged that he would run the risk of being tortured if returned to a particular State, the authorities were obliged under the Convention to conduct an inquiry into the correctness of the allegations. The person concerned should not be returned to a country where such a risk existed or expelled to another country from which he might be returned to a country where he was in danger of being tortured.

26. Provision must be made for an inquiry into every death in custody.

27. Mr. EL MASRY (Alternate Country Rapporteur) thanked the delegation for its lucid and efficient response to the Committee's questions. He was aware of the difficulties that developing countries faced in honouring their reporting obligations and thanked Mauritius for fulfilling them so ably.

28. The CHAIRMAN invited the delegation to return later in the session to hear the Committee's conclusions and recommendations.

29. The delegation of Mauritius withdrew.

The public part of the meeting rose at 4 p.m.

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COMMITTEE AGAINST TORTURE

Twenty-second session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 372nd MEETING

Held at the Palais des Nations, Geneva,
on Friday, 30 April 1999, at 10 a.m.

Chairman: Mr. BURNS

CONTENTS

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (continued)

Second periodic report of Bulgaria

* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.372/Add.1.

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Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.99-41416 (E)

The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 5) (continued)

Second periodic report of Bulgaria (CAT/C/17/Add.19; HRI/CORE/1/Add.81)

1. At the invitation of the Chairman, Mr. Draganov, Mr. Gantchev, Mr. Steffanov and Mr. Vladimirov (Bulgaria) took places at the Committee table.

2. The CHAIRMAN invited the delegation to introduce the second periodic report of Bulgaria.

3. Mr. DRAGONOV (Bulgaria), stressing his country's commitment to the implementation of the principles set forth in the international human rights instruments, said that the favourable climate that had prevailed in Bulgaria since the 1997 elections had enabled the Government to undertake measures to that end.

4. Bulgaria had withdrawn its reservations to articles 28 and 30 of the Convention against Torture and had made the declarations envisaged under articles 21 and 22. It had also ratified and adopted a number of international instruments which were related to the Convention, among them the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and the European Convention on Extradition and the Convention relating to the Status of Refugees. It had signed many bilateral agreements on mutual legal assistance and was about to sign others.

5. In the legislative sphere, great efforts had been made to modernize criminal law. First, the death penalty had been abolished. Second, various amendments had been made to the Penal Code. The various amendments relating to torture had aimed to stiffen the punishments applicable to the perpetrators of acts cited in article 4 of the Convention and more effectively to protect individuals from acts of torture. The Penal Procedure Code had also been reviewed and a number of provisions introduced, including one which prohibited the extradition of a person to a country where he ran the risk of being subjected to torture or ill-treatment. Similar provisions appeared in the bilateral extradition agreements entered into by Bulgaria, and the same would hold for all new agreements. It was also planned to improve the penal procedure system so as to guarantee equal rights to all citizens and to bring it into conformity with the provisions of international conventions, in particular with the European Convention on Human Rights. To rectify the lack of provisions on judicial supervision, a draft law had been formulated which would permit only one court to hand down or modify a detention order and to exercise such supervision, inter alia, over the application of procedural decisions. Citizens also had the right to lodge an appeal with a higher court, which was a further guarantee of their rights. Similarly, the Execution of Punishments Act had been amended with a view to strengthening guarantees for the humane treatment both of persons held in pre-trial detention and of those serving sentences. The new Ministry of the Interior Act, along with its attached rules and instructions, was designed to ensure greater respect for the rights, freedoms and dignity of individuals.

6. The efforts undertaken by Bulgaria to combat human rights violations, and in particular torture, were not solely of a legislative character. Special attention was paid to the training of police and government officials, particularly those who came into contact with detainees; training programmes were conducted with the assistance of international organizations. Police interrogation procedures had been reviewed and physical conditions in places of detention had been improved in an effort to bring them into line with international standards. Following an awareness campaign conducted by non-governmental organizations (NGOs) on the theme of the prevention of torture, all complaints of ill-treatment were investigated in depth. If the allegations were substantiated, the official responsible was held accountable for his actions before the law. A number of remedies were available to citizens for the protection of their rights. By virtue of Bulgaria's accession to the European Convention on Human Rights, citizens who were victims of torture could address a complaint to the European Court of Human Rights, which they did not hesitate to do. Some complainants who had won their case had been awarded compensation by the State. The measures taken on behalf of the Roma community with a view to combating displays of intolerance against them were also worthy of note.

7. All those measures, along with many others that had been described in detail in the report, and the goodwill that the Government had shown in cooperating fully with the members of international bodies working to eradicate torture, such as the Committee against Torture and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, both of which had sent missions to the country whose recommendations had been acted upon, demonstrated Bulgaria's concern to implement international human rights standards, especially those set out in the Convention against Torture.

8. The Government of Bulgaria, aware of the task that still lay before it, was convinced that the dialogue with the Committee, and the observations and recommendations resulting therefrom, would assist the country in achieving its goals.

9. Mr. SØRENSEN (Country Rapporteur) commended the Bulgarian delegation on the quality of the report, which complied with the Committee's guidelines. The report had, however, been submitted seven years late, and the third periodic report had been due in June 1996. That was especially regrettable in view of the many developments that had taken place since the change of regime in that country; he hoped that Bulgaria would be able to submit its third periodic report in June 2000, and perhaps even the fourth.

10. The State party had failed to incorporate articles 1 and 4 of the Convention into its legislation, since it contained no definition of torture and since torture did not constitute a criminal offence, as paragraph 9 of the report made clear. Lacking a precise criminal definition of torture and a provision explicitly establishing that acts of torture were subject to appropriate penalties, it was difficult to determine the number of cases that occurred in the country. In addition, the State would be better able to exercise its universal jurisdiction in respect of acts of torture if that practice was a punishable offence under domestic law. Lastly, the argument

that law enforcement personnel, whether police officers or judges, could invoke the Convention was unconvincing, since their knowledge of the criminal law did not necessarily imply familiarity with the terms of the Convention.

11. He therefore urged Bulgaria to respect its obligations under the Convention. On the one hand, it should draft, and incorporate into its legislation, a definition of torture, preferably in keeping with the one contained in article 1 of the Convention: it should state that torture meant severe pain or suffering, phyical or mental, and that such suffering must be intentionally inflicted for a specific purpose and carried out by an agent of the State. On the other hand, Bulgaria should make torture a special criminal offence subject to heavier penalties than an ordinary offence, in view of the odious nature of that practice.

12. Turning to conditions of detention pending trial, he said that, as he had learned from his visit to Bulgaria in 1995 on behalf of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the length of custody was deplorably long. Although, officially, persons arrested remained only briefly in the hands of the police before being turned over to the National Investigative Service, they in fact continued to be detained in police stations, which were not designed for long stays and did not provide proper sanitary conditions or allow detainees to work. It would be useful to know whether Bulgaria was still using dilapidated premises of the National Investigative Service for that purpose, and, if so, how many persons were detained there. Finally, had measures been taken to relieve the deplorable conditions, and in particular the overcrowding, that had prevailed in police station cells in 1995?

13. On the matter of minors and adolescents, discussed in paragraphs 14 to 16 of the report, he observed that a child could be placed in a corrective boarding school on the decision of a court, a prosecutor or a local commission. Was it possible to appeal against the decision of the prosecutor or the commission? He also inquired whether children were taken into care by an impartial individual responsible for protecting them and for ensuring the protection of their rights. He would also like to know whether the new regulations concerning the prohibition on means and methods degrading human dignity, mentioned in paragraph 15, were already in force, or, if not, when they would be. Lastly, paragraph 16 indicated that special attention would be accorded to children who had nobody to look after them, in order to protect them from any form of violence or inhuman treatment. It would be useful to know how and by whom that protection was implemented in practice.

14. Paragraphs 19 to 21 of the report, which dealt with the enforcement of article 3 of the Convention, stated that no one could be returned to a country where he ran the risk of being tortured. The Committee would like to know how that guarantee was implemented in practice and whether it applied to all asylum seekers. The requirement under article 3 brooked no exceptions, even for terrorists or convicted criminals: how did the authorities proceed in such cases?

15. Bulgaria would be better able to exercise its universal jurisdiction in respect of acts of torture if the domestic legislation contained a definition of torture. In that regard, it would be interesting if the delegation could give a specific example of how a foreigner who had committed an act of torture abroad against a non-Bulgarian could be brought to justice in Bulgaria.

16. The information provided regarding article 10 of the Convention was most comprehensive and satisfactory. With regard to paragraph 36 of the report, which in fact concerned not article 10 but article 11, he inquired what entity - judge, NGO or special agency - conducted the periodic reviews discussed at the start of that paragraph, and whether those reviews produced concrete results, such as, for example, a report which could serve as the basis for action. Paragraph 38 indicated that there were currently no plans to set up an independent body to monitor the conditions of detention, arrest or deprivation of liberty, although that was the precise objective of article 11 of the Convention. It was true that external bodies such as the European Committee for the Prevention of Torture and various NGOs undertook investigations, but in practice it would be interesting to know whether those investigations were public, to whom their reports were directed, and who was responsible for follow-up. Paragraph 43 of the report mentioned inspections conducted by the European Committee for the Prevention of Torture. That Committee propounded four fundamental guarantees with regard to custody and detention centres, namely: the obligation to inform the detainee of his rights, his right to inform a third party of his arrest, his right to be assisted by counsel from the beginning of the interrogation, and, lastly, his right to be examined by an independent physician. He would like to know whether those guarantees were applied, and whether they were set out in a statutory or legislative text.

17. The statistics provided in paragraph 50 of the report with regard to article 12 of the Convention were unclear. It seemed that there had been 46 cases of torture between 1991 and 1997, but that 4 persons had died as a result of beatings, a very high proportion. Other figures were cited in paragraph 46, but those seemed to relate to prison staff. In any event, it would be remarkable if only 46 cases of ill-treatment had occurred in 6 years. He would like to know whether those statistics also covered the National Investigative Service, or whether the statistics for that body were separate. Paragraph 47 of the report indicated that some persons had been held in detention after serving out their term, because of the late announcement of sentences: it was important to know how the authorities intended to resolve that startling situation.

18. Paragraph 56 of the report indicated that anyone who was the victim of torture could address a complaint to the European Commission of Human Rights: the Committee against Torture should also have been mentioned in that context, since Bulgaria had made the declaration provided under article 22.

19. With regard to the implementation of article 14 of the Convention, it was worth noting that a well-functioning rehabilitation centre for victims of torture existed in Sofia. Bulgaria should consider commemorating the International Day in Support of Victims of Torture, proclaimed by the United Nations General Assembly, by making a contribution, however token, to

the United Nations Voluntary Fund for Victims of Torture, which provided financial assistance to the Sofia centre; torture victims were always very sensitive to demonstrations of respect and support.

20. Mr. YAKOVLEV (Alternate Country Rapporteur) observed that the State party was making great efforts to implement the Convention, although many problems remained.

21. It had been brought to the Committee's attention that police officers had been found guilty of brutalizing members of the Roma community in order to extract confessions, that some police officers had improperly used firearms against Roma, killing three, and that cases of, inter alia, searches without a warrant and destruction of property, had occurred. Did Bulgaria have laws prohibiting discrimination, bodies for protecting minority populations against discriminatory acts, and independent mechanisms for investigating complaints of police brutality? It was particularly important to know whether there were texts regulating the use of firearms and, more broadly, whether the sensitive matter of the judicious use of force had been considered.

22. Mr. HENRIQUES GASPAR paid tribute to the Bulgarian Government, which had had the political courage to abolish capital punishment despite the difficulty of winning over public opinion. With reference to article 15 of the Convention, paragraph 62 of the report stated that there was no special indication in the Penal Procedure Code that statements made as a result of torture should be accepted as evidence. Would that omission be remedied in the new Penal Procedure Code that was being drafted? It was an important point with many complex ramifications, for a confession obtained by unlawful means could lead to the uncovering of other evidence that should also be deemed inadmissible. The Convention formed an integral part of the legislation of Bulgaria, but that did not exempt the State party from including specific rules on that point in its criminal procedure.

23. Mr. MAVROMMATIS said that, while many difficulties still impeded the implementation of the Convention in Bulgaria, the authorities were clearly doing their best in all good faith to surmount them. With regard to the report, he remarked that paragraph 2 could have mentioned the Convention against Torture alongside the European Convention for the Prevention of Torture.

24. Bulgaria had made praiseworthy efforts to take account of the Committee's recommendations relating to article 2 of the Convention. He would appreciate further clarification of the offence of leading a person to commit suicide, as mentioned in paragraph 8 of the report.

25. The need to incorporate the Convention's definition of torture in Bulgarian domestic legislation could not be overemphasized. Although the Convention had been incorporated in domestic legislation on ratification, it was still desirable to adopt a specific legal provision making torture an offence. The concept was necessary, for example, in order to establish whether or not a risk of torture existed in expulsion cases, and the provisions pertaining to such cases needed to be improved.

26. Lastly, he also expressed surprise at the reference in paragraph 47 of the report to "late announcement of sentences", which suggested that people could be imprisoned without knowing the length of their sentence.

27. The CHAIRMAN agreed with previous speakers that Bulgaria was making sincere efforts to apply international human rights standards in difficult circumstances. He particularly welcomed the abolition of capital punishment.

28. It was becoming increasingly clear that the Committee's work complemented that of the Special Rapporteur on torture. However, the latter stated, in his report for 1998, that he had received no reply from the Bulgarian Government about several specific cases to which he had drawn its attention in 1996 and 1997: would the Government be providing the Special Rapporteur with further information in the near future?

29. Thanking the delegation for its participation, he invited it back to a later meeting to reply to the questions that had been raised.

30. The delegation of Bulgaria withdrew.

The public meeting rose at 11.45 a.m.

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COMMITTEE AGAINST TORTURE

Twenty-second session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 373rd MEETING

Held at the Palais des Nations, Geneva,
on Friday, 30 April 1999, at 3 p.m.

Chairman: Mr. BURNS

CONTENTS

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (continued)

Initial report of The former Yugoslav Republic of Macedonia (continued)

Initial report of Venezuela (continued)

* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.373/Add.1.

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GE.99-41444 (E)

The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 5) (continued)

Initial report of The former Yugoslav Republic of Macedonia (continued) (CAT/C/28/Add.4)

Conclusions and recommendations of the Committee (CAT/C/XXII/Misc.9)

1. At the invitation of the Chairman, Ms. Stefanovska-Sekovska (The former Yugoslav Republic of Macedonia) took a place at the Committee table.

2. Mr. YAKOVLEV (Country Rapporteur) read out the Committee's conclusions and recommendations on the initial report of The former Yugoslav Republic of Macedonia:

"1. The Committee considered the initial report of The former Yugoslav Republic of Macedonia (CAT/C/28/Add.4) at its 366th, 369th and 373rd meetings held on 27, 28 and 30 April 1999 (CAT/C/SR.366, 369 and 373) and adopted the following conclusions and recommendations:

A. Introduction

2. The former Yugoslav Republic of Macedonia, as a successor State, recognized the obligations of the former Yugoslav Federation and on 12 December 1994 became a State party to the Convention. Accordingly, The former Yugoslav Republic of Macedonia continues to recognize the competence of the Committee against Torture with regard to articles 20, 21 and 22 of the Convention.

3. The Committee was grateful to the State party for the size and quality of its delegation, which contributed in large measure to the fruitful dialogue developed during the consideration of the report.

4. The submission of the initial report of The former Yugoslav Republic of Macedonia was delayed for reasons that were largely outside the control of the State party. The report generally is in conformity with the guidelines of the Committee for the preparation of State party reports.

B. Positive aspects

5. The Committee considers as positive aspects the following:

(a) Article 11 of the Constitution of The former Yugoslav Republic of Macedonia provides that the human right to physical and moral dignity is irrevocable and that any form of torture, or inhuman or humiliating conduct or punishment, is prohibited;

(b) It is very important that the Criminal Code defines as a crime the act of a public official who, while performing his duty, applies force, threats or some other forbidden method of extorting a confession;

(c) The establishment of a State Commission for the supervision of penal and correctional institutions;

(d) The participation of public officials in seminars on the prohibition of abuse and torture, organized by the Council of Ministers and the Council of Europe;

(e) The evident willingness of the State party to implement the provisions of the Convention;

(f) The commitment of The former Yugoslav Republic of Macedonia to respecting the principles and norms contained in the Convention by including extensive training of police and medical personnel in its system of education and re-education. Of particular note is Macedonia's incorporation of the norms reinforcing the prohibition of torture into its primary and secondary school curricula.

C. Factors and difficulties impeding the application of the provisions of the Convention

6. The Committee recognizes that the current situation in The former Yugoslav Republic of Macedonia puts a considerable burden on the Government but should not prevent the Government from making all efforts to fully implement the provisions of the Convention.

D. Subjects of concern

7. The absence of a specific crime of torture as defined in the Convention.

8. The ambiguity of the provisions in the Criminal Code with regard to elements and penalty. This leads to confusion as to the way in which article 2, paragraph 3, and article 4 of the Convention are implemented.

E. Recommendations

9. The definition of torture as contained in the Convention and torture as a defined crime should be incorporated into the Criminal Code of The former Yugoslav Republic of Macedonia with appropriate penalties attached to it.

10. The State party is urged to investigate complaints of maltreatment by government officials, particularly those that relate to ethnic minorities. The investigations should be prompt and impartial and those officials who may be responsible for such maltreatment should be prosecuted.

11. The former Yugoslav Republic of Macedonia, at its borders, should fully comply with its obligations under article 3 of the Convention even in the present situation of a massive influx of refugees from Kosovo.

12. The Committee would like to know, in particular, from the State party what is the specific legal source providing that the justification of superior orders is not applicable to the crime of torture."

3. The CHAIRMAN drew attention to an additional table submitted by the delegation providing statistics of persons accused of and sentenced for criminal acts with elements of torture or inhuman and humiliating acts.

4. The delegation of The former Yugoslav Republic of Macedonia withdrew.

The meeting was suspended at 3.15 p.m. and resumed at 3.30 p.m.

Initial report of Venezuela (continued) (CAT/C/16/Add.8)

5. At the invitation of the Chairman, the members of the delegation of Venezuela took places at the Committee table.

6. The CHAIRMAN invited the delegation of Venezuela to respond to the questions that the Committee had put to it at its 354th meeting.

7. Mr. SIMÓN JIMÉNEZ (Venezuela) said that the Government of Venezuela had changed as a result of the general elections held in December 1998. Moreover, in a referendum held on 25 April 1999, a majority of the people of Venezuela had approved the establishment of a constituent assembly to draft a new constitution during the six-month period from July to December 1999. All international treaties would continue to have constitutional status under the new constitution and would be self-executing. The role of the Public Prosecutor in the Attorney-General's Office, the official responsible for ensuring respect for the human rights and fundamental freedoms guaranteed by Venezuelan legislation, was being reviewed. The institutional protection of human rights would also be strengthened by the creation of an office of ombudsman. The new constitution would retain the provisions of articles 59 and 60 of the 1961 Constitution, which guaranteed the physical integrity of citizens and prohibited procedures that caused physical and moral suffering. He agreed with the Committee, however, that the reform of the Constitution, the Criminal Code and the Code of Criminal Procedure was just a first step towards ensuring full respect for human rights. The new administration was aware of the need to promote the practical implementation of international instruments through preventive and educational measures. The tradition of authoritarianism in Venezuela and Latin America as a whole had influenced the behaviour of the police and security forces, but the human rights approach that had prevailed since the 1980s was gradually bearing fruit.

8. It was hoped that the bill concerning the prevention and punishment of torture and other cruel, inhuman or degrading treatment or punishment, which was currently before Congress, would be adopted as soon as possible and become an integral part of domestic legislation. The bill prohibited the expulsion, return or extradition of a person to another State where there were substantial grounds for believing that he would be subjected to torture. With

regard to the request for extradition of Ms. Cecilia Rosana Núñez Chipana, a Peruvian citizen, the Supreme Court had decided that all the necessary procedural steps had been taken and that extradition could proceed once it had been established that the person to be extradited would not be subject to the death penalty or life imprisonment in the requesting State and would be treated in accordance with the provisions of international human rights treaties, in particular the Convention. Peru was a State party to the Convention and had provided Venezuela with the necessary guarantees regarding its treatment of the person to be extradited. The Venezuelan Minister for Foreign Affairs and the Ambassador to Peru had visited the prisoner and requested both the former Peruvian Minister of Justice and the incumbent Peruvian Minister for Foreign Affairs to take steps to improve her conditions of detention.

9. The Committee had expressed concern about the continued existence in the Venezuelan legal system of the defence of due obedience, especially in the Military Criminal Code. The new Criminal Code and Code of Criminal Procedure would substantially amend the provisions in question. Moreover, certain provisions of the Code of Military Justice were inconsistent with the Constitution and hence inapplicable.

10. Considerable progress had been made in handling allegations of human rights violations by the armed forces. For example, in October 1997 a Human Rights and International Humanitarian Law Department had been established at the Ministry of Defence to investigate such allegations and develop a human rights policy to be pursued by the armed forces. The President, a former military officer, was determined that the security forces should comply strictly with their obligations under the Constitution and other legislation and receive training in the protection and promotion of human rights. He had prohibited the National Guard from acting in any circumstances in a manner that might encroach on the rights of citizens. The Bolivar 2000 Plan required the armed forces to become involved in civilian projects such as the building and refurbishing of schools and hospitals. It was hoped thereby to improve the relationship between citizens and the armed forces and to change existing attitudes on both sides.

11. The new Code of Criminal Procedure had been approved by Congress and had entailed amendments to legislation concerning, for example, the Office of the Attorney-General, the Criminal Investigation Service, the Judicature Council and the penitentiary system, and infrastructural reforms. The expected date of entry into force of the new Code was 1 July 1999. Some provisions were already being implemented in practice, for example the abolition of in camera proceedings and alternative forms of dispute settlement.

12. With regard to disciplinary procedures in the police force, the Minister of Internal Relations had set up a Police Coordination Department to supervise and apply a uniform policy to the metropolitan, regional and local police forces. A database of allegations of police wrongdoing and ensuing disciplinary measures had been compiled.

13. Human rights instruction had been incorporated into the curriculum of training courses for the five police forces operating in the metropolitan area of Caracas and was a compulsory part of the courses followed by most municipal

and regional police forces. In police circulars, daily instructions and other documents, emphasis was laid on the need for absolute respect for the rights and dignity of citizens.

14. In response to complaints from international organizations, concerted efforts were being made to reduce violence in Venezuelan prisons, in particular by improving conditions and promoting the rehabilitation and social integration of offenders. Human rights were increasingly being incorporated into prison staff training programmes.

15. Although legal reforms alone would not solve all the problems highlighted by the Committee, a range of new measures would at least help reduce the incidence of torture. Significantly, the new Code of Criminal Procedure would render extrajudicial statements null and void (para. 27 of the report).

16. In the 1960s, it had been common for the military justice system to handle civil cases, mainly with a view to intimidating persons for political motives. Now that democracy had returned to the country and that the criminal procedure system was finally developing as it ought, the Government was keen to ensure that military justice did not overstep its competence. To that end, the Supreme Court had ruled that legal decisions should be left to the legal system. Civilians wishing to assert their right to be tried in a regular civilian court could have recourse to the newly promulgated remedy of amparo, which guaranteed them judicial protection (para. 6).

17. Regarding outstanding issues raised by members, a committee had been established under the office of the Presidency of the Republic to safeguard women's rights, targeting retrograde practices and revising discriminatory legislation. Furthermore, a special unit had been created in the police force to investigate cases of family violence and other problems affecting women.

18. As to the two cases raised by Mr. Bruni concerning Luiris Elena Acosta Flores and Alisson González Garcia, court decisions were still pending. In the latter case, the official concerned had been suspended from his duties the previous year and submitted to DNA tests. In both cases, the competent tribunals had been ordered to establish responsibility and the necessary criminal and disciplinary procedures were under way.

19. Eager to meet its international commitments, the country would be submitting its outstanding reports at the earliest opportunity. The Committee would also be kept abreast of the drafting of the new Constitution, which would contain express mention not only of international commitments, but also of the new status accorded to the Convention in domestic law.

20. Venezuela hoped to learn from the Committee's advice and experience and would be keen to receive information on mechanisms for dealing with torture cases and rehabilitating torture victims. In view of economic difficulties currently facing the country, assistance from friendly organizations in improving the system would be much appreciated.

21. The delegation would shortly be appearing before Congress, confident that the legislature would be receptive to change. The Government was determined to ensure that human rights did not become a dead letter and that the safeguards and mechanisms provided for were properly applied in practice.

22. The CHAIRMAN confirmed that the Committee would be delighted to assist Venezuela in implementing the Convention. The delegation's request for information would be forwarded to the secretariat.

23. Mr. GONZÁLEZ POBLETE (Country Rapporteur) requested the delegation to provide information on the relative status of Supreme Court decisions, including lists of sentences.

24. The delegation of Venezuela withdrew.

The public part of the meeting rose at 4.10 p.m.

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COMMITTEE AGAINST TORTURE

Twenty-second session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 374th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 3 May 1999, at 10 a.m.

Chairman: Mr. BURNS

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SOLEMN DECLARATION BY A MEMBER OF THE COMMITTEE APPOINTED UNDER ARTICLE 17, PARAGRAPH 6, OF THE CONVENTION

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (continued)

Third periodic report of Italy

* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.374/Add.1.

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Official Records Editing Section, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.99-41476 (E)

The meeting was called to order at 10.05 a.m.

SOLEMN DECLARATION BY A MEMBER OF THE COMMITTEE APPOINTED UNDER ARTICLE 17, PARAGRAPH 6, OF THE CONVENTION (agenda item 2)

1. The CHAIRMAN noted that Mr. Zupančič had resigned and that the State of which Mr. Zupančič was a national, Slovenia, in agreement with the other States parties, had designated Mrs. Polajnar-Pavčnik to replace him. He invited Mrs. Polajnar-Pavčnik to make the solemn declaration provided for in rule 14 of the Committee's rules of procedure (CAT/C/3/Rev.2).

2. Mrs. POLAJNAR-PAVČNIK made the following solemn declaration: "I solemnly declare that I will perform my duties and exercise my powers as a member of the Committee against Torture honourably, faithfully, impartially and conscientiously."

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 5) (continued)

Third periodic report of Italy (CAT/C/44/Add.2)

3. At the invitation of the Chairman, Mr. Moreno, Mr. Citarella, Mr. Mancuso, Mr. Pierangelini, Mr. Corvo, Mr. Maruccia and Mr. Calvetta (Italy) took places at the Committee table.

4. Mr. MORENO (Italy) said that the Italian Government had exhaustively examined the recommendations which the Committee had made on considering Italy's second periodic report and had attempted to cover them as thoroughly as possible in its third report. It had also replied separately to the Committee's concluding observations concerning the second periodic report.

5. The report (CAT/C/44/Add.2) described the views of the Ministry of Justice of Italy concerning the introduction of the crime of torture into Italian legislation. Numerous members of Parliament representing different political views had submitted a bill on torture, which was also aimed at setting up a special fund for victims of acts of torture.

6. On the basis of a statistical evaluation and reports by particularly reliable non-governmental organizations (NGOs), he was confident that the steps taken by the Italian authorities to set up special courses on the various human rights instruments were giving satisfactory results; the courses had been instituted for all members of the police force, carabinieri and prison staff, and efforts in that area had intensified in connection with the fiftieth anniversary of the Universal Declaration of Human Rights.

7. The Government had also taken steps to meet the arrival of hundreds of thousands of illegal immigrants in successive waves from the Maghreb area, Bosnia, Kurdistan and Albania, and more recently from Kosovo. The law on immigration was designed to regulate the flow of immigration into Italy and to guarantee respect for the rights of all foreigners entering Italian territory, and it provided for special jurisdictional procedures to decide, without the usual formalities and within a very short period of time, on any complaint lodged by a foreigner concerning status, field of employment or discrimination. Health measures had made it possible to regularize the position of more than 300,000 foreigners who had entered Italy illegally.

8. The presence in Italy of a large number of non-European Union foreigners (1.2 million according to some sources) raised problems of integration, education and health. Both the central and local authorities based themselves on the principle that all foreigners whatever their origin and whether they had entered the country legally or illegally, should have exactly the same rights and opportunities as Italian citizens. Additional facilities, such as language courses for both adults and children, had been established for that purpose. On the other hand, it had to be emphasized that the presence of so many foreigners, of different cultures and nationalities, raised many problems in daily life. While there were no signs of a discriminatory attitude among the Italian population, measures were being taken at all levels towards the full integration of foreigners. Some sporadic racial episodes had occurred, for which extremist fringe groups largely consisting of teenagers had been responsible. What was most alarming about illegal immigration was the fact that an ever-increasing number of newcomers were being linked to organized crime and that many of them were trafficking in drugs and practising prostitution. Statistics on prisons reflected that situation: the number of foreigners detained for involvement in criminal procedures was approximately one third of the entire prison population, whereas foreigners in Italy represented less than 8 per cent of the Italian population.

9. In view of the increasing numbers of foreigners detained, efforts had been made to ensure respect for their rights, especially in the following areas: right to defence counsel; respect for religious customs; health care; opportunity to learn a trade; cultural assistance; and mediation. In addition, the provisions of the Prisons Act and its enforcement norms had been incorporated into the 1998 Consolidated Act on Immigration and the Condition of Foreigners. The new provisions had been translated into several languages. In the same vein, provisions relating to the health of foreign prisoners, whether or not they were members of the social security system, granted them the same rights as Italian citizens regarding accidents or emergency or essential health care. An April 1999 circular sought to help foreigners who were not in order with their identity papers or residence permits to find jobs.

10. Action had been necessary in order to meet the increase in the prison population as a whole; Act No. 165 of 1998 had established alternative measures to detention, which had led to a gradual decline in the number of prisoners, as confirmed by the statistics - there had been a slow but progressive decrease in the number of prisoners serving short- or medium-term sentences - and, most importantly, had made it possible to avoid imprisonment for those who, out of ignorance or due to inability to afford defence counsel, would not have been given a suspended sentence pending the outcome of their application for community service. In addition, when a request for home detention or semi-liberty (in the case of sentences not exceeding six months) was submitted after the beginning of the execution of the sentence, the Supervisory Judge could order the suspension of the execution of the sentence and, if necessary, the provisional enforcement of the alternative measure, pending the judgement of the Supervisory Court.

11. Recent organizational changes in the prisons had included the establishment of UGAP, a service aimed at ensuring security, order and discipline in the prisons, through advisory assistance to the Director General of the Prison Administration in the following areas: identification of

resources for prison services and structures; transfer to another prison or to an external hospital service of prisoners detained for particularly serious crimes; possible establishment of special security facilities; cooperation with the Central Protection Service of the Public Security Department concerning the formulation and implementation of protection measures provided for under Act No. 82 of 15 March 1991. UGAP was also in charge of coordinating the action of the Mobile Task Force and the criminal investigation police in inquiries related to the institutional activities of the Prison Police Corps.

12. Amendments had been proposed to the Code of Criminal Procedure, providing for special measures relating to pre-trial detention, deferment of the enforcement of a sentence, etc., in order to increase protection for individuals at an advanced stage of AIDS.

13. To give effect to the recommendations of the European Committee for the Prevention of Torture (CPT), a recent Memorandum had been issued concerning the medical visits register, in which the physician reported the outcome of the first entry visit; in accordance with CPT recommendations, physicians must enter in the register statements made by the clients about their own health, possible abuse suffered, relevant circumstances surrounding it and persons allegedly responsible and provide their own evaluation of compatibility between the injuries found and the causes stated by the clients. The Memorandum stipulated that, when injuries were found, the prison governor must immediately transmit the physician's notes, together with any other information made available by other staff members, to the judicial authority. Prison staff were under an obligation promptly to request a physician's intervention upon entry of prisoners showing injuries or signs of possible violence or abuse.

14. In accordance with remarks from international organizations, a Circular had been issued in March 1999 concerning censorship of prisoners' correspondence. The Circular referred to the decisions of the European Court of Human Rights, which had reaffirmed the fact that the norms on censorship of correspondence occasionally violated articles 8, 13 and 25 of the European Convention for the Protection of Human rights. The Circular therefore provided that, pending the necessary changes to articles 18 and 35 of the Prisons Act, requests by the prison governor to the judicial authority for censorship of correspondence should explicitly exclude all correspondence addressed to the Council of Europe, the Human Rights Committee and the European Court of Human Rights, for the duration of six months subject to extension on request.

15. Mr. EL MASRY (Country Rapporteur), noted with appreciation Italy's punctual submission of its report for the third time. However, Italy had still not implemented article 4 of the Convention and the Committee's recommendation, on considering Italy's second report, that the offence of torture should be introduced into Italy's Criminal Code. In that respect, he wondered how the report could state that the Italian Government was on the whole in favour of introducing the crime of torture into the Criminal Code while at the same time implying that it was superfluous given the multiplicity of provisions in the Criminal Code covering various offences, such as bodily injury and others which might fall within the purview of torture.

16. Paragraph 9 of the report did mention a bill for the introduction of a special aggravating circumstance to be called "torture", which was defined in very explicit terms and which increased a sentence by one third or one half. However, bills of that type submitted to Parliament in the past had never been discussed. He asked whether that situation was due to a basic opposition by Parliament to the introduction of such a definition or to an overburdened legislative calendar.

17. Regarding the measures taken under article 2 of Law No. 332 mentioned in paragraph 11, he welcomed the progress represented by the introduction of a new provision stipulating that questioning outside court had to be documented by sound or audio-visual recordings, failing which it could not be used in evidence, which was a means of discouraging attempts at coercion or evading the rules. In that connection, he said that the report of CPT on its second visit to Italy indicated that access to defence counsel and confidentiality were not always guaranteed, as it was unusual to find defence counsel in police stations and confidentiality was dependent upon the infrastructure; he asked for further information, in particular concerning the practice of "informal" questioning.

18. The CPT's report also indicated that detainees were informed of their rights, but only on admission to prison. The Committee agreed with CPT that that was too late, as the risk of ill-treatment began with arrest.

19. He welcomed the new provision mentioned in paragraph 12 of the report, providing for the prohibition, applicable to every kind of decision, against the judge turning an accused's silence into an argument against him. He also welcomed the adoption of Law No. 40 of 6 March 1998, governing immigration and the condition of aliens, which provided that an alien living in the country legally enjoyed the same civil rights and treatment as an Italian citizen, within the limits of the law, defined a discriminatory act and indicated the principal legal remedies available to ensure the cessation of such an act.

20. With regard to the holding centres where foreigners in an irregular situation were placed for a maximum of 20 days when they could not be expelled immediately, he asked what were the rights of foreigners held in such centres, besides the right to contact family members abroad, in what way such centres were different from prisons and whether, once the 20 days were up, the foreigner still could not be expelled immediately.

21. He asked whether the new reception policy for foreigners mentioned in paragraph 21 of the report was being implemented in order to meet the current inflow of refugees from Kosovo.

22. He noted with appreciation the measures described in paragraph 30, which provided for a system in which foreign prisoners to whom the judicial authorities proposed alternative penalties could also be granted temporary work permits for the period of the duration of their sentence. He welcomed the amendment to a provision of article 37 of the Executive Regulations, cited in paragraph 32 of the report, according to which the telephone conversations of foreign prisoners would be overheard and recorded only when specifically ordered by the competent juridical authority. That measure enabled foreign prisoners to maintain contact with their families, which they might previously have been unable to do if the prison lacked interpreters with a command of their language.

23. Turning to the individual cases described in part II of the repor said that the information on Somalia was unfortunately too brief and th had therefore had to use other sources, including Amnesty International reports. In the summer of 1997, a group of Italian parachutists who ha part in United Nations peacekeeping operations in Somalia in 1993 and 1 publicly denounced acts of torture which they had seen committed by oth Italian blue helmets against Somalis, some of whom had died as a result commission of inquiry set up by the Italian Government to look into the matter - the Gallo Commission - had concluded that the incidents of vio had "only" been isolated cases, although it had acknowledged that in fut military officials assigned to that type of operation should be better and had recommended, in particular, that military police personnel and should be included in such missions. The Gallo Commission had also fou number of the cases reported - application of electric shocks, collecti rapes, attempted rapes, ill-treatment resulting in serious injury (conc which the armed forces had falsified documents in an attempted cover-up be credible and probably true.

24. However, the Gallo Commission had not made one visit to Somalia t conduct an inquiry and gather testimony. In view of their poor educati limited means the victims would never be able to bring their cases befo Italian courts. Thus he fully endorsed the June 1997 proposal by Amnest International to the Italian authorities concerning the establishment o effective mechanism for processing the complaints of the Somali victims, asked the Italian delegation to provide more extensive information on th number and nature of the cases and the status of the procedures relatin them. It would also be useful to know which acts had been punished by t disciplinary sanctions handed down by the Ministry of Defence in 12 case mentioned by Amnesty International; he hoped they were not the acts of t in question, which required sanctions of a quite different, and much har order.

25. Apart from the Somalia case, the information contained in the repo Amnesty International and the United States Department of State appeared indicate that members of the Italian police and armed forces were racial prejudiced towards foreigners and tended to treat them violently. He no with appreciation the information in paragraph 21 of the report, accordi which the recently approved legislation, notwithstanding its repressive aspects, was characterized by a new receptiveness to foreigners which ap to reflect a new attitude on the part of the police forces. Paragraph 3 the report stated that every future member of the police was required to a series of tests in order to be hired; he asked whether those tests inc psychological tests and whether current staff were also required to take tests.

26. Mr. BURNS (Alternate Country Rapporteur) said that Italy seemed to facing a two-fold problem: overcrowding in the prisons and tensions bet the police and foreigners. He welcomed the specific remedial measures be taken. He was also in favour of the initiatives taken in connection with training for the carabinieri, which now included a human rights component a matter of particular interest, training was dispensed not by the carabi services themselves but by the university. Freedom of worship in the pri was another positive point.

27. In another sphere, he also welcomed the decision systematically to make audio or video recordings of all interviews between the police and persons in custody, noting that the worst abuses were committed during the custody period. The custody period - five days - was too long; he asked whether that period was one of solitary confinement during which the suspect was unable to consult a lawyer.

28. He would appreciate a brief description of the provisions governing the obligation to carry an identity document, for both Italian nationals and foreigners. In that connection, he cited the case of Grace Patricia Akpan - mentioned in paragraph 85 - who had been charged with violating several articles of the Criminal Code, merely for forgetting her identity document at home. More generally, he wondered whether it was advisable for a modern democracy to maintain the offence of slander against the police and armed forces.

29. He did not understand some of the figures given in paragraph 46. It stated that 31 cases had ended in a guilty verdict, whereas later in the paragraph it was stated that 38 other cases had ended in a guilty verdict. What exactly was the situation regarding those cases?

30. He fully endorsed Mr. El Masry's questions regarding the Somalia case. Concerning the Italian citizens who had disappeared in Argentina (report, para. 80), he asked on what legislation the intervention had been based. He compared the case to General Pinochet's situation in the United Kingdom and expressed appreciation at the fact that impunity seemed to be losing ground in the Western countries.

31. Finally, he would like to know the status of the inquiry into the Salvatore Marino case and the reasons for the delay in settling it.

32. Mr. SØRENSEN said he would like to see the Committee against Torture added to the list of organizations to which prisoners could write without having their mail censored.

33. He noted with appreciation the various provisions concerning training of staff, especially medical staff. He would like to know the status of the seminars on the various aspects of recognizing injuries mentioned in paragraph 60 of the report.

34. Noting that neither Italy's initial report nor its second or third periodic reports dealt with the right to redress and compensation contained in article 14 of the Convention, he welcomed the new bill, which dealt at length with questions relating to compensation. Beyond the financial aspect, he would like to know whether the bill provided for symbolic measures of redress, such as public recognition of the injury suffered by the victim. In that context, he thanked Italy for its generous contribution to the United Nations Voluntary Fund for the Victims of Torture and noted the symbolic importance of 26 June, the United Nations International Day in Support of Victims of Torture.

The public part of the meeting rose at noon.

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COMMITTEE AGAINST TORTURE

Twenty-second session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 375th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 3 May 1999, at 3 p.m.

Chairman: Mr. BURNS

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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (continued)

Second periodic report of Mauritius (continued)

Second periodic report of Bulgaria (continued)

* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.375/Add.1.

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GE.99-41502 (E)

The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 5) (continued)

Second periodic report of Mauritius (CAT/C/43/Add.1)

Conclusions and recommendations of the Committee

1. At the invitation of the Chairman, Mr. Dabee, Mr. Baichoo, Mrs. Dwarka-Canabady and Ms. Narain (Mauritius) took places at the Committee table.

2. The CHAIRMAN invited the Alternate Country Rapporteur to read out the conclusions and recommendations adopted by the Committee concerning the second periodic report of Mauritius (CAT/C/43/Add.1).

3. Mr. EL MASRY (Alternate Country Rapporteur) read out the following text:

"1. The Committee considered the second periodic report of Mauritius (CAT/C/43/Add.1) at its 368th, 371st and 375th meetings, held on 28 and 29 April and 3 May 1999 (CAT/C/SR/368, 371 and 375) and has adopted the following conclusions and recommendations:

A. Introduction

2. The Committee welcomes the report of Mauritius, submitted on time and supplemented and updated by the Solicitor-General of the State party, who introduced it. The above clearly reflects the continuing efforts of the State party to comply with its international human rights obligations.

B. Positive aspects

3. The Committee takes note of the following, inter alia, positive aspects, many of which closely follow upon recommendations made by it during the consideration of the initial report:

(a) The abolition of the death penalty;

(b) The recent coming into force of the Protection of Human Rights Law which establishes the National Human Rights Commission, the competence of which includes examination of torture complaints;

(c) The amendment of article 16 of the Constitution in order to prohibit discrimination based on gender;

(d) The training programmes for the police and other law enforcement officials with a human rights component.

C. Factors and difficulties impeding the application of the provisions of the Convention

4. No factors or particular difficulties emerged as a result of the consideration of the report by the Committee and it was clear that the State party, a developing country, is to the best of its ability carrying out its obligations under the Convention.

D. Subjects of concern

5. The Committee is concerned about the fact that, six years after its accession to the Convention and four years after the consideration of its initial report, the State party had failed to incorporate into its internal legislation important provisions of the Convention, namely:

(a) A definition that encompasses all cases covered by article 1 of the Convention;

(b) Article 3 of the Convention in toto, i.e. covering not only extradition but also expulsion and return (refoulement); and

(c) The provisions of article 5, paragraphs 1 (b) and (c) and 2, in conjunction with those of articles 8 and 9.

E. Recommendations

6. The Committee recommends that the State party should take the following measures:

(a) Enact legislation defining torture in accordance with article 1 of the Convention and considering it as a specific crime;

(b) Clarify through appropriate legislation that superior orders can never be invoked as a justification of an act of torture;

(c) Introduce legislation that would give effect to all the provisions of article 3 of the Convention by preventing extradition, return and expulsion of persons where they may be in danger of being subjected to torture;

(d) Take legislative measures to establish universal jurisdiction as required by article 5 of the Convention;

(e) Apprise the Committee of the results of the investigation and judicial inquiries into the death, whilst in custody, of Mr. Kaya; and

(f) Ensure that all instances of torture, and especially those resulting in death, are promptly and effectively investigated by an independent body and that the perpetrators are brought immediately to justice."

4. Mr. BAICHOO (Mauritius) thanked the Committee for considering the report and for its recommendations on measures to be taken to improve implementation of the Convention. He was particularly grateful that Mr. El Masry had recognized that reporting obligations for the human rights treaty bodies could represent a substantial burden for developing countries. He also took the opportunity to thank the Office of the United Nations High Commissioner for Human Rights for its assistance in preparing the Human Rights Bill, which had established a National Human Rights Commission. When she had addressed the fifty-fifth session of the United Nations Commission on Human Rights, the High Commissioner had said that international cooperation for capacity building at the national level was a cornerstone of the human rights endeavour. At the same session, Mauritius had supported a resolution calling for early adoption of a draft optional protocol to the Convention against Torture.

5. The CHAIRMAN thanked the delegation for its cooperation. The Committee was delighted to see a constructive dialogue taking place, and was particularly pleased that the delegation included the Solicitor-General, who had taken the time to respond to the Committee members' questions.

6. The delegation of Mauritius withdrew.

The meeting was suspended at 3.20 p.m. and resumed at 3.30 p.m.

Second periodic report of Bulgaria (CAT/C/17/Add.19)

7. At the invitation of the Chairman, Mr. Draganov, Mr. Gantchev, Mr. Steffanov and Mr. Vladimirov (Bulgaria) took places at the Committee table.

8. The CHAIRMAN invited the Bulgarian delegation to reply to the questions asked by members of the Committee at the 372nd meeting.

9. Mr. DRAGANOV thanked the Committee members for their observations and questions, which would certainly prove useful in improving the country's legislation and practice. The dialogue that was taking place would be of immense importance in improving the legislative effort under way to implement the letter of the Convention.

10. Turning to comments and questions raised by Mr. Sørensen, the Country Rapporteur, he said that the Bulgarian delegation was prepared to submit a consolidated third and fourth report by July 2000 to bring the country's reporting up to schedule. He also recognized that the absence of a definition of the crime of torture in the national legislation was a substantial lacuna. An initiative to meet the requirement of Article 4 of the Convention by introducing provisions covering the crime of torture in the Penal Code had broken down owing to administrative problems, but was soon to be resumed. As mentioned in paragraph 9 of the second periodic report (CAT/C/17/Add.19), many of the elements of a definition already existed in the national legislation.

11. Mr. Sørensen had expressed concern that detainees were kept in the same premises after their cases had been referred for investigation, and that those premises did not meet sanitary and other requirements for a long stay. In the

past two years, responsibility for the places of preliminary detention had been transferred from the Ministry of the Interior to the Ministry of Justice and renovations had been carried out, thus solving many of the problems. A new facility which met the highest international standards had been built in Sofia by the Specialized Investigation Service (formerly the National Investigation Service).

12. A question had been raised concerning the possibility of appeal and assistance by defending counsel when a child was sentenced to a term in a correctional facility. The Code of Criminal Procedure stipulated that when an adolescent from 14 to 18 years of age was convicted, the sentence could be appealed against and a lawyer could be present. In cases where minors were placed in corrective boarding schools under articles 61 and 64 of the Penal Code, no provisions existed for appeal, as the corrective placement was considered a favourable alternative to penal sanctions. In any case the presence of a lawyer was obligatory and the parents or foster parents were informed and invited to take part. Decisions by local commissions to place children in corrective boarding schools were subject to review by a judge, who was obliged to see the child upon the request of the child or the parents. Since such decisions were not ordinary criminal procedures, the presence of a lawyer was not required. However, the minor could be defended by a teacher, a parent or another representative.

13. Mr. Sørensen had also asked what regulations currently governed the work of the corrective boarding schools, pending approval of the new regulations mentioned in paragraph 15 of the report. The schools were managed by the Ministry of Education according to existing by-laws. The maximum stay at such institutions had been set by law at three years. For children who had no one to look after them, under the Combating Antisocial Behaviour by Minors and Adolescents Act a number of full-time schools, temporary stay institutions and facilities for street children had been established. In addition, several children's villages had been set up by the non-governmental organization (NGO), SOS-Kinderdorf International.

14. Unless otherwise specified in a bilateral treaty, the Code of Criminal Procedure stipulated that extradition requests were considered by three judges and a prosecutor. The foreign citizen was by right entitled to a lawyer and, if necessary, an interpreter. Appeal was possible, and the decision of the court of appeal was definitive.

15. Under the Penal Code, foreign citizens who committed the crime of torture outside Bulgaria would be held responsible. If the victim was a Bulgarian national, the perpetrator would be prosecuted in all cases. If both the perpetrator and the victim were citizens of countries which had not ratified the Convention against Torture, the perpetrator would be brought to justice only if a bilateral agreement so required.

16. The periodic review of the rules, instructions, methods and practices used for the interrogation, detention and treatment of suspects, detainees and convicts was carried out, as needed, by the bodies which had adopted them. The process was supervised by the appropriate inspection units of the Ministry of Justice.

17. Places of detention were inspected by officials from the Ministry of the Interior or the Ministry of Justice. Inspections by international and national NGOs were also permitted. The findings were made public by the press services of the ministries and were carried in the media.

18. Regarding the right of detainees to have contact with their lawyers and with the outside world and to obtain medical care, the Constitution, the Code of Criminal Procedure and the Ministry of the Interior Act stipulated that from the moment of arrest, detainees were guaranteed the right to contact a lawyer. They further provided that prior to conviction detainees were entitled to one visit per month, but in practice weekly visits were allowed with the permission of the prison director. In low-security facilities inmates had the right to unlimited telephone contacts. Medical care was available at places of detention, but access to a doctor and the right to a medical examination were not guaranteed for persons held at police stations. His delegation would appreciate any recommendations from the Committee on ways to overcome that shortcoming.

19. Noting that paragraph 50 of the periodic report mentioned 46 cases of torture, including 5 involving death, Mr. Sørensen had wondered whether the number reported was an underestimate. His reply was that those were the only statistics his delegation could provide, and that they reflected the number of cases registered under the Convention.

20. With regard to continued detention after expiry of the sentence, the 144 cases mentioned in paragraph 47 of the report were a matter of concern but were not typical. Penitentiary bodies were obliged to inform the prosecutor of the beginning and ending dates of the sentence served. In the event of deliberate arbitrary deprivation of liberty, the officials concerned could be sentenced to 3 to 10 years' imprisonment under the Penal Code. Moreover, victims of continued detention could file claims for compensation from the State.

21. Mr. Sørensen had asked whether the cases of torture to which the report referred included data from the National Investigation Service. They did not, as such data were currently unavailable. However, the Service was undergoing a reform which should lead to judicial review of its practices and more transparency with regard to possible cases of torture.

22. As to why Bulgarian citizens did not make use of the possibility of sending claims to the Committee against Torture instead of the European Court of Human Rights, he could only reply that it was not due to lack of information on the Convention against Torture, which was an integral part of education on human rights in Bulgaria.

23. Bulgaria would look into the possibility of marking the International Day in Support of Victims of Torture on 26 June, and was considering the allocation of a contribution to the United Nations Voluntary Fund for Victims of Torture.

24. In answer to Mr. Yakovlev's, question about protection of the Roma population against discrimination, Bulgaria had no specific legislation on the prevention of discrimination against minorities and ethnic groups. It had,

however, recently ratified the Council of Europe's Framework Convention for the Protection of National Minorities, and that would certainly influence future standard setting. Discrimination on the basis of ethnicity was prohibited by provisions of the Constitution, the Penal Code and other national legislation detailed in the consolidated twelfth, thirteenth and fourteenth periodic report of Bulgaria to the Committee on the Elimination of Racial Discrimination (CERD/C/299/Add.7). The Bulgarian Government had also established a National Council on Demographic and Ethnic Issues which, with the participation of over 150 Roma organizations, had drawn up a framework programme on the integration of Roma in society. A special law on discrimination would soon be adopted, establishing a governmental body to prevent, identify and help solve problems relating to discrimination against the Roma.

25. Independent mechanisms currently monitoring the use of force and firearms included the judiciary, the media and human rights NGOs. There had also been discussion in recent years about the possible establishment of an Ombudsman's office, and such an institution might well be established in the near future.

26. The use of firearms was specified as a last resort under domestic legislation. In certain cases, a warning was required. The police and armed forces were permitted to use firearms during armed attack or threat by firearm, in imperative self-defence, in the release of hostages, in arresting a perpetrator, and in preventing a detainee from escaping. An order issued by the Ministry of the Interior in October 1998 prohibited the use of firearms in two cases: if the life of a third party was endangered, and to apprehend fleeing suspects, except in imperative self-defence.

27. In answer to Mr. Silva Henriques Gaspar, the Code of Criminal Procedure did not specifically refer to evidence produced through torture, but did provide certain guarantees: the accused had a right to ask for a lawyer to be present during an interrogation; a sentence could not be based on the accused's confession alone; and any officer committing torture faced prosecution.

28. Mr. Mavrommatis could rest assured that the Convention had been directly incorporated into domestic legislation.

29. The crime of driving someone to suicide, referred to in paragraph 8 of the report, was considered a crime of torture if committed by a person acting in an official capacity for purposes specified in article 1 of the Convention.

30. The Code of Criminal Procedure, in line with the Convention, precluded extradition of a foreign citizen if that person would be subjected to violence, torture or other cruel, inhuman or degrading treatment or punishment in the requesting country, and if that country did not provide for the protection of the rights stipulated in the Code.

31. In paragraph 47 of the report, "late announcement of sentences" referred mainly to bureaucratic delays. With reform of the judiciary currently under way, it was to be hoped that such delays would be avoided in the future.

32. The Government would take steps to provide the Special Rapporteur on Torture of the Commission on Human Rights with the informtion requested as soon as possible.

33. The CHAIRMAN expressed his hope that any further delay would be avoided.

34. Mr. SØRENSEN (Country Rapporteur), responding to the delegation's request for recommendations on the provision of medical care at police stations, observed that a call-in system would suffice. It was important to ensure that detainees were offered a choice of physicians to conduct an examination on request, for that was one of the safeguards against torture.

35. Mr. DRAGANOV (Bulgaria) said that a call-in system was already in place. A choice of physicians did tend to be offered in practice, but that safeguard should indeed be legislated for.

36. Mr. YAKOVLEV (Alternate Country Rapporteur) welcomed the independence of the judiciary, but stressed that during preliminary investigations an independent agency, such as an ombudsman, was also vital.

37. The CHAIRMAN thanked the delegation for its willingness to engage in dialogue.

38. The delegation of Bulgaria withdrew.

The public part of the meeting rose at 4.00 p.m.